

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, *et al.*,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendant.

Civil Action No. 18-CV-2921

NEW YORK IMMIGRATION COALITION,  
*et al.*,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendant.

Civil Action No. 18-5025  
(Consolidated Case)

Hon. Jesse M. Furman

**MEMORANDUM OF LAW IN SUPPORT  
OF PLAINTIFFS' MOTIONS *IN LIMINE***

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## **INTRODUCTION**

Pursuant to this Court’s Individual Rules and Practices 5(B).i, Plaintiffs, the State of New York and New York Immigration Coalition *et al.*, submit these motions *in limine* to bar defendants from introducing certain testimony or other evidence at trial. Plaintiffs seek to exclude the following specific categories of testimony and other evidence: (1) post hoc justifications for Secretary Ross’s March 26, 2018 memorandum; (2) testimony or argument based on deliberative processes that were not disclosed in discovery by defendants; (3) testimony or argument from Defendants that census response rates will not decline or that there will not be an undercount; (4) testimony or argument that plaintiffs and their experts did not adequately prove that a decline in response rates will occur or that there will be an undercount; and (5) testimony from any non-disclosed fact witness.

## **ARGUMENT**

### **MIL 1: THE COURT SHOULD PRECLUDE DEFENDANTS FROM OFFERING POST-HOC JUSTIFICATIONS OF SECRETARY ROSS’S MARCH 26, 2018 MEMORANDUM**

Defendants should not be allowed to offer post-hoc rationalizations or support for Secretary Ross’s March 26, 2018 memorandum. (March 26, 2018 Mem. of Secretary Wilbur Ross, AR0001313). In response to the DOJ’s request that the Census Bureau add a citizen question to the decennial census, Secretary Ross determined that adding the citizenship question to the 2020 decennial census was “necessary to provide complete and accurate data” to aid DOJ in enforcement of the Voting Rights Act. *Id.* at AR0001313, AR0001320. Secretary Ross explained in the March 26 memo that he took a “hard look at the request” and “considered all facts and data relevant” in order to make his decision. *Id.* Secretary Ross further explained the four options he was considering, two of which included adding the citizenship question per

DOJ's request; and stated that he consulted with "Census Bureau leadership and interested stakeholders" to conduct a "thorough review of the legal, program and policy considerations," that included an evaluation of the impact of adding a citizenship question. *Id.*

Defendants have since sought to buttress Secretary Ross's memorandum with additional, after-the-fact rationalizations. For example, during their testimony, senior Commerce officials testified about new rationales and justifications for asking the citizenship question, unrelated to the Voting Rights Act (*see* Ex. A; Comstock Tr. 107-110, 261-262). These rationales and evidence were not considered by Secretary Ross when he wrote the March 26 memorandum, and should not be admitted for the purpose of supporting Secretary Ross's March 26 memorandum.

Deference traditionally afforded an agency is not appropriate when the agency's position "appears to be nothing more than an agency's convenient litigating position." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 213 (1988); *U.S. Steel Mining Co., LLC v. Dir., OWCP*, 386 F.3d 977, 986 (11th Cir. 2004) ("we do not afford deference to ad hoc positions of agencies adopted in reaction to the exigencies of litigation; rather, deference is due when an agency has taken a constant and unchanging—and reasonable—position . . ."). Here, Secretary Ross, and Defendants, have insisted that the Voting Rights Act rationale was the only basis for the decision to add the citizenship question to the Decennial Census. They have insisted that the evidence available and presented in the March 26 memo justified the addition of the question. Defendants should therefore now be prohibited from offering any post hoc rationale or evidence justifying the decision for the simple reason that it would not be the stated reason for Secretary Ross's decision. *See William Bros. v. Pate*, 833 F.2d 261, 265 (11th Cir. 1987) (Court was not "inclined to defer to an inconsistent position" where a "Director has seen fit to adopt a contradictory position on related issues when to do so furthers the chances of success in litigation"); *Bradberry*

*v. Dir., Office of Workers' Comp. Programs*, 117 F.3d 1361, 1366 (11th Cir. 1997)(“we need not defer to a mere litigating position”).

**MIL 2: DEFENDANTS SHOULD BE PRECLUDED FROM USING DELIBERATIVE PROCESS PRIVILEGE AS A SWORD AND A SHIELD**

Defendants have invoked deliberative process privilege as a shield to withhold discovery about their intent in including the citizenship question in the census. Defendants should therefore be precluded from introducing evidence or argument at trial as a sword to challenge Plaintiffs’ evidence and arguments about Defendants’ discriminatory intent.

It is well established that “a party cannot use materials as a ‘sword’ in its defense ‘while using privileges attaching to [materials relied upon for that defense] as a “shield.”” *In re City of New York*, 607 F.3d 923, 946-47 (2d Cir. 2010) (quoting *John Doe Co. v. United States*, 350 F.3d 299, 302 (2d Cir. 2003)). In other words, “a party may not affirmatively rely on privileged communications to support a claim or defense and then shield those communications from discovery by its adversary.” *U.S. v. Ghailani*, 751 F. Supp. 2d 498, 501 (S.D.N.Y. 2010). This doctrine applies in the context of various privileges. *See, e.g., In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008); *Chevron Corp. v. Donziger*, No. 11-Civ.-0691, 2013 WL 4045326, at \*4 (S.D.N.Y. Aug. 9, 2013); *Favors v. Cuomo*, 285 F.R.D. 187, 212 (E.D.N.Y. 2012); *Ghailani*, 751 F. Supp. 2d at 501. That includes deliberative process privilege. *See, e.g., U.S. v. Wells Fargo Bank, N.A.*, No. 12-CV-7527 (JMF), 2015 WL 6935917, at \*2 (S.D.N.Y. Oct. 22, 2015); *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liability Litig.*, 898 F. Supp. 2d 603, 607 (S.D.N.Y. 2012).

This is important because the Defendants have repeatedly insisted that their intent and questions of pretext are irrelevant because they are entitled to a so-called “presumption of regularity,” while continuing to shield hundreds of otherwise relevant Department of Commerce and Justice documents on the basis of deliberative privilege. While Plaintiffs have been selective

in challenging the invocation of this privilege, the Court has granted a number of Plaintiffs' motions requiring disclosure.<sup>1</sup> And the compelled documents show anything but "regularity" – including an email between Secretary Ross and a top aide about the need to censor the Administrative Record in light of judicial review, AR 12476, and a second document disclosing that "Justice Department staff did not want to raise the question. . . ." and Commerce appointees would look into "how Commerce could add the question to the Census itself." AR 12755.

Defendants here have repeatedly invoked the deliberative process privilege as a basis to withhold otherwise relevant documents or information. Notwithstanding successful motions to compel, the Defendants have refused to independently evaluate those assertions and continue to assert deliberative privilege over hundreds of Commerce and Justice Department documents.

Parties may not assert a defense, including a purported lack of "intent," that "in fairness requires examination of protected communications." *U.S. v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991). In *United States v. Bilzerian*, a defendant charged with securities fraud sought to testify at trial that he had acted in good faith, *i.e.*, that his intent was to comply with the securities laws, without disclosing the content or even the existence of any privileged communications and without asserting a reliance on counsel defense. *Id.* at 1291. Because good faith necessarily called into question the defendant's communications with his attorney, the Second Circuit held that such testimony implicitly waived the attorney-client privilege. *See id.* at 1291–94. As the

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<sup>1</sup> ECF No. 323, 369. For example, in response to plaintiffs' September 20, 2018 motion to compel challenging DOJ's invocation of deliberative 2018, Plaintiffs sought disclosure of 27 Department of Justice ("DOJ") documents Defendants withheld on the basis of deliberative process privilege. ECF 343. Plaintiffs argued these documents would "likely shed light on whether DOJ's purported rationale for requesting the citizenship question was legitimate or pretextual." *Id.* at 3. Defendants agreed to disclose one document and determined the material redacted from another was non-responsive. Docket No. 343 at 1. Defendants asserted deliberative process privilege over the remaining 25 documents. *See id.* These documents received *in camera* treatment after which the Court ruled 19 documents must be disclosed to Plaintiffs. ECF No. 369 at 6.

court explained, a party “may not use [a] privilege to prejudice his opponent’s case or to disclose some selected communications for self-serving purposes.” *Id.* at 1292.

The integrity of decision-making by the Commerce Department is central to this litigation, and the withheld documents may shed light on that process. That is why Plaintiffs sought their production. The sword/shield doctrine squarely prevents Defendants from offering evidence or argument suggesting that the inclusion of the citizenship question is not pretextual, while withholding discovery into whether Defendants in fact developed a pretext. Nor can Defendants claim Plaintiffs’ evidence of discriminatory intent is lacking, while withholding discovery into whether Defendants in fact acted with discriminatory intent. Defendants fought for, and won, the opportunity to shield these deliberations from disclosure. They cannot now turn around and weaponize these same withheld deliberations as evidence or argument at trial that they acted without discriminatory intent. *See Bilzerian*, 926 F.2d at 1291-92; *Burka v. N.Y.C. Transit Auth.*, 110 F.R.D. 660, 667 (S.D.N.Y. 1986) (“Where the decision-making process itself is the subject of the litigation, the deliverative [sic] privilege may not be raised as a bar against disclosure of critical information.”). Nor can they strategically introduce portions of these communications about the citizenship question when they withheld others. *See Bilzerian*, 926 F.2d at 1292.

Any assertion by Defendants of a lack of intent to discriminate, absence of pretextual justification, or presumptions of regularity puts their own deliberations in these documents at issue. *See In re Nielsen*, No. 17-Civ.-3345, 2017 U.S. App. LEXIS 27681, at \*11 n.2 (2d Cir. Dec. 27, 2017); *In re Subpoena Duces Tecum Served on Office of Comptroller of Currency*, 145 F.3d 1422, 1424 (D.C. Cir. 1998); *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liability Litig.*, 898 F. Supp. 2d 603, 609-10 (S.D.N.Y. 2012). In the *MTBE Product Liability Litigation*,

the New Jersey Department of Environmental Protection (“NJDEP”) claimed various manufacturers of the gasoline additive MTBE had contaminated New Jersey’s groundwater. 898 F. Supp. 2d at 606. NJDEP raised, among other claims, a failure to warn claim that requires establishing the product’s lack of “adequate warning or instruction” of its dangers and safe uses. *Id.* at 608. This claim put at issue NJDEP’s internal decision-making process, and therefore, “the deliberative process must give way.” *Id.* at 610. The same would be true of any lack of intent defense Defendants raise based on the withheld information. Defendants cannot assert a lack of intent defense or lack of pretext defense without also asserting the withheld documents do not contain evidence of their discriminatory intent or pretextual justification. By raising this defense, Defendants would put at issue their lack of intent by seeking to rebut Plaintiffs’ claims with evidence to which Plaintiffs do not have access. *See Ghailani*, 751 F. Supp. 2d at 501. They would be offering evidence or arguments that could only be proved or disproved with the materials over which they have asserted privilege. In so doing, Defendants would prejudice Plaintiffs. *See Bilzerian*, 926 F.2d at 1292. This is prohibited by the sword/shield doctrine.

For the foregoing reasons, Defendants should be barred from offering evidence or argument regarding lack of intent (including presumption of regularity), lack of pretext, or other topics about which they withheld discovery on the grounds of deliberative process privileged.

**MIL 3: DEFENDANTS SHOULD BE PRECLUDED FROM ARGUING THAT THERE IS NO EVIDENCE THAT CENSUS RESPONSE RATES WILL DECLINE.**

Likewise, defendants should be precluded from using Section 9 of Title 13 (“Title 13”) as a sword and a shield. *In re City of New York*, 607 F.3d at 946-47 (quoting *John Doe Co. v. United States*, 350 F.3d 299, 302 (2d Cir. 2003)); *Ghailani*, 751 F. Supp. 2d at 501.

Throughout discovery, Plaintiffs have sought data, including Numident citizenship data and data from the American Community Survey (“ACS”), an annual survey conducted by the Census Bureau that includes a question concerning citizenship status, in order better quantify the impact of the citizenship question on the Census. But Defendants claim this data constitutes “proprietary information[.]” Citing Title 13, Defendants repeatedly refused to release this data. By withholding this data, *inter alia*, Defendants have prevented Plaintiffs from obtaining, through the normal course of discovery, evidence that would have allowed Plaintiffs’ experts to buttress their testimony regarding the expected decline in participation in the 2020 Census should the citizenship question be added, and the resultant undercount.

Because Defendants have withheld data relevant to the question of decline in response rates and undercounts for certain communities, Plaintiffs now move to prevent Defendants from offering any argument, testimony or other evidence at trial that (a) there is no evidence that adding the citizenship question to the 2020 Census would lead to a decrease in the response rate for certain communities, (b) there is no evidence that adding the citizenship question to the 2020 Census would lead to an undercount for certain communities, or that (c) Plaintiffs’ experts have failed to quantify sufficiently the decline in those response rates or undercounts. While Defendants had a right to raise their objections, they cannot both deprive Plaintiffs of data that would assist their analysis by asserting Title 13 and then argue that Plaintiffs’ proof regarding these topics is insufficient.

There is no question that the withheld data would allow Plaintiffs to further support their analyses. Plaintiffs’ experts have already produced substantial evidence that the addition of the citizenship question will reduce response rates of noncitizen, immigrant, and Hispanics, particularly in light of the current political climate. They have supplemented their analysis as

more data becomes available. For example, the 2017 PUMS ACS data was publicly released on October 18, 2018, and Plaintiffs have now been able to analyze some of that data. In fact, Plaintiffs' expert quickly analyzed the data about non-response and demonstrated that, since 2016, trends indicative of a decline in self-response have significantly increased. Plaintiffs presented this analysis in an October 23 supplemental disclosure. However, none of the public ACS data contains information like Numident citizenship data, so this recent analysis cannot be as robust as the analysis done by the Census Bureau. *See* Ex. B, ACS Breakoff Analysis, AR0010382. As Plaintiffs' experts have made clear, access to the information that Defendants have withheld would have allowed Plaintiffs to further bolster their analysis. *Id.* For example, when asked at her deposition whether she had "attempted to quantify the potential impact of a citizenship question on the self-response rate of Hispanic citizens," Dr. Hillygus testified that "[t]he Census Bureau has not produced the data that would make that possible." (Ex. C, Deposition of Dionne Sunshine Hillygus at 25:21-25). By withholding this data, Defendants have deprived Plaintiffs of the means by which their experts could bolster their analysis.

Plaintiffs expect that Defendants will try to contend at trial, as they have in the past, that the expected decrease in response rates of minorities and hard-to-count populations is "speculative" by arguing that Plaintiffs and Plaintiffs' experts lack empirical data to show the decline. Further, Plaintiffs expect that Defendants will argue, as their expert Dr. John Abowd has, that:

no expert has produced credible quantitative evidence that the addition of a citizenship question to the 2020 Census would increase the net undercount or increase differential net undercounts for identifiable sub-populations. Therefore, there is no credible quantitative evidence that the addition of the citizenship question would affect the accuracy of the count. (Defendants' Disclosures Pursuant to Rule 26(A)(2)(C) at 3.)

Dr. Abowd repeatedly criticized Plaintiffs' experts for failing to adequately quantify the undercount that would result from adding the citizenship question to the Census. *See also* ECF No. 387-5 (Abowd 10/12 Tr. at 72:17-73:3 (stating that Dr. Matthew Barreto lacked "credible evidence that the citizenship question will have a bearing on the net undercount"); *id.* at 216:3-12 (claiming that Plaintiffs' experts "should have been able to" provide a quantification of the difference caused by adding the citizenship question).

At the same time, Defendants have failed to conduct the analysis themselves, all while invoking Title 13 to deprive Plaintiffs of the data to independently conduct such analysis. Indeed, Dr. Abowd conceded that the Census Bureau could have used this information to study this question and that Dr. Abowd, himself had proposed studying this question to Census Bureau leadership – but did not do so. *Id.* at 288-289. As a result, Defendants complain about insufficiency of proof as to the decline in self-response or undercount when they had exclusive possession of the data necessary to measure and refused Plaintiffs the opportunity to do so.

For these reasons, Defendants should not be allowed to argue that Plaintiffs have failed to present such evidence. Having refused to give Plaintiffs that information, Defendants should not be able to argue at trial (or put on testimony) about the adequacy of Plaintiffs proof or any purported failure by Plaintiffs to prove undercount that would result if the citizenship question were included. *United States v. Bilzerian*, 928 F.2d 1285, 1292 (2d Cir. 1991) (a party "may not use . . . privilege to prejudice his opponent's case).

**MIL 4: DEFENDANTS SHOULD BE PRECLUDED FROM PROFERRING TESTIMONY FROM ANY FACT WITNESSES AT TRIAL.**

Defendants failed to identify any fact witnesses in their initial disclosures, but have reserved their right to call anyone who is on Plaintiffs' initial disclosure list, or who has appeared in a deposition. The Court should not permit testimony by additional witnesses to be put forth at

trial. Rule 26(a)(3) requires parties, in an initial disclosure, to “provide to the other parties . . . information about the evidence that it may present at trial other than solely for impeachment,” including “the name . . . of each witness.” Fed R. Civ. P. 26(a)(3)(A). Federal Rule of Civil Procedure 37(c)(1), in turn, provides that if a party fails to disclose information required by Rule 26(a) or (e), “the party is not allowed to use that information” at trial “unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1).

Defendants’ initial disclosure of July 23, 2018 (attached as Ex. D) stated that “there are no fact witnesses Defendants intend to use to support their claims or defenses, other than for impeachment,” and Defendants have never supplemented this disclosure. (Ex. D, Defs.’ Initial Disclosure at 2). Defendants have made no indication that they intend to call further witnesses – instead reiterating that the agency action should be reviewed only “on the basis of the administrative record produced by the agency,” and the Court should not permit Defendants to change course now. At this stage of the proceedings, Defendants can make no reasonable argument that the failure to disclose any fact witnesses was substantially justified; and on the other side of the ledger, Plaintiffs would be significantly prejudiced by such a late addition of a witness. Accordingly, the Court should not allow Defendants to present any factual witnesses at trial. *E.g., Innis Arden Golf Club v. Pitney Bowes, Inc.*, No. 3:06-cv-1352 (JBA), 2009 WL 5873112, \*3 (D. Conn. 2009) (“Rule 37(c)(1)’s preclusionary sanction is automatic absent a determination of either substantial justification or harmlessness.”) (citation omitted).

**CONCLUSION**

For the foregoing reasons, plaintiffs request that the Court grant the relief requested in motions *in limine* 1 through 4.

Respectfully submitted,

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1 UNITED STATES DISTRICT COURT  
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4 NEW YORK IMMIGRATION COALITION, ET AL.,

5 Plaintiffs,

6 vs. Case No. 1:18-CF-05025-JMF

7 UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

8 Defendants.  
9 -----

10 Washington, D.C.

11 Thursday, August 30, 2018

12 Deposition of:

13 EARL COMSTOCK

14 called for oral examination by counsel for  
15 Plaintiffs, pursuant to notice, at the office of  
16 Arnold & Porter, 601 Massachusetts Avenue NW,  
17 Washington, D.C., before KAREN LYNN JORGENSEN,  
18 RPR, CSR, CCR of Capital Reporting Company,  
19 beginning at 9:08 a.m., when were present on  
20 behalf of the respective parties:  
21  
22

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1 VIDEOGRAPHER: Dan Reidy

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1 P R O C E E D I N G S

2 WHEREUPON,

3 VIDEOGRAPHER: Good morning. We are  
4 going on the record at 9:01 a.m. on Thursday,  
5 August 30, 2018. Please note that the microphones  
6 are sensitive and may pick up whispering, private  
7 conversations and cellular interference. Please  
8 turn off all cell phones or place them away from  
9 the microphones, as that can interfere with the  
10 deposition audio. Audio and video recording will  
11 continue to take place unless all parties agree to  
12 going off the record.

13 This is Media Unit 1 of the video  
14 recorded deposition of Earl Comstock to be taken  
15 by counsel for the plaintiff in the matter of the  
16 New York Immigration Coalition, et al., v. The  
17 United States Department of Commerce, et al. This  
18 case is filed in the United States District Court  
19 for the Southern District of New York. This  
20 deposition is being held at the law office of  
21 Arnold & Porter located at 601 Massachusetts Avenue  
22 Northwest, Washington, D.C. 20001.

1           My name is Dan Reidy from the firm  
2           Veritext Legal Solutions, and I am the  
3           videographer. The court reporter is Karen  
4           Jorgenson from Veritext Legal Solutions.

5           I am not authorized to administer an  
6           oath. I am not related to any party in this  
7           action, nor am I financially interested in the  
8           outcome.

9           Also, counsel appearances will be noted  
10          on the stenographic report rather than orally at  
11          this time.

12          Will the court reporter please swear in  
13          the witness?

14                       EARL COMSTOCK,  
15          called as a witness, and having been first duly  
16          sworn, was examined and testified as follows:

17               THE WITNESS: I do.

18               EXAMINATION BY MR. COLANGELO:

19           Q     Please state your name and work address.

20           A     Earl Comstock, U.S. Department of  
21           Commerce.

22           Q     And we met a minute ago, but for the

1 record, I'm Matthew Colangelo. I work for the  
2 New York Attorney General, and I represent  
3 plaintiffs in one of the actions challenging the  
4 inclusion of a citizenship question on the  
5 decennial census. I'll be taking your deposition  
6 today.

7 Have you been deposed before?

8 A Nope.

9 Q Okay. So I will ask questions. I just  
10 ask that you answer honestly and completely. If  
11 at any point you don't understand a question I've  
12 asked, please just let me know that it was unclear  
13 and I can see if I can rephrase it.

14 A Okay.

15 Q Does that work?

16 A Sure.

17 Q Karen introduced herself. She's  
18 transcribing this deposition. She'll be taking  
19 down my questions and your answers. In order to  
20 make sure that we have a clear transcript, please  
21 wait until I'm done asking a question before you  
22 answer it, and I will try to make sure I don't

1 interrupt your answers either.

2 Sound good?

3 A Sounds perfect.

4 Q Great.

5 Can you tell me how you prepared for your  
6 deposition today?

7 A Met with counsel yesterday.

8 Q And did you review any documents during  
9 that meeting?

10 A A few documents that are in the record,  
11 yes.

12 Q Great.

13 And did you review any of those documents  
14 for the purpose of refreshing your recollection  
15 about any of the events involved in this lawsuit?

16 A No.

17 Q Tell me about your educational background  
18 after high school.

19 A After high school, I went to the  
20 University of California Santa Barbara, and then  
21 worked in Alaska for a couple years. Started  
22 working for Senator Ted Stevens from Alaska and

1 the Senate Committee, Science and Transportation.  
2 Did that for ten years.

3 Left the Hill, and became a partner at a  
4 law firm. Did that for six years, and then was  
5 CEO of a trade organization for two years. Ran my  
6 own consulting firm for about seven years. Went  
7 back to a law firm for about a year and a half,  
8 and then became counsel for a start-up.

9 Q Okay. So I got your UCSB degree. That  
10 was a bachelor's degree?

11 A Correct.

12 Q And I may have missed it in your answer.  
13 But I take it at some point you earned a law  
14 degree.

15 A I did.

16 Q Okay.

17 A I went to night law school while working  
18 for the Senate.

19 Q Got it.

20 And what year did you earn your J.D.?

21 A 1992.

22 Q 1992. Okay.

1           And are you currently admitted to the  
2 practice?

3           A     In the District, yes.

4           Q     In D.C.

5           Is your registration active or inactive?

6           A     I believe it's active. I'd have to go  
7 double-check.

8           Q     Okay. And are you admitted in any other  
9 states?

10          A     I was admitted in Alaska and that's  
11 inactive.

12               (Thereupon, the court reporter  
13 clarified.)

14 BY MR. COLANGELO:

15          Q     And tell me what your college degree  
16 field of study was?

17          A     Political science.

18          Q     Do you have any education training or  
19 experience in statistics?

20          A     Did -- well, George Mason University does  
21 accounting, statistics and economics for lawyers,  
22 which is a required part of the course. So I had

1 two years of that, and also had an environmental  
2 science minor at UCSB, so did a number of  
3 statistics and chemistry and biology courses in  
4 relation to that.

5 Q And by in relation to that, you mean in  
6 relation to the environmental science degree?

7 A Correct.

8 Q Okay. Do you have any education,  
9 training or experience in survey methodology?

10 A No.

11 Q Do you have any education, training or  
12 experience in demography?

13 A Other than basic introduction to  
14 demography, no.

15 Q What do you mean by introduction?

16 A Well, what you take in an undergraduate  
17 course that covers demography.

18 Q Okay. Do you have any education,  
19 training or experience in voting rights law?

20 A No.

21 Q Do you have any education training or  
22 experience in redistricting?

1           A     No.

2           Q     Do you have any education, training or  
3     experience in election law?

4           A     Again, other than as an attorney and the  
5     ability to read laws, no.

6           Q     Okay. By as an attorney and the ability  
7     to read laws, you mean if you needed to read a  
8     law, you could?

9           A     Meaning if I had read a statute related  
10    to those, then I would be able to understand it,  
11    yes.

12          Q     But you've never studied election law?

13          A     I've never studied election law.

14          Q     You've never practiced election law?

15          A     No.

16          Q     Okay. Were -- between November 2016 and  
17    February 2017, you were a member of the  
18    presidential transition team?

19          A     From November -- yeah, just after  
20    Thanksgiving until I began working for the  
21    Department of Commerce, yes.

22          Q     Okay. And when did you begin working at

1 Department of Commerce?

2 A January 31st, I believe.

3 Q 31st, okay.

4 When did you join the presidential  
5 transition team?

6 A This would have been around  
7 November 28th.

8 Q And what were your responsibilities on  
9 the transition?

10 A I was Sherpa for getting people through  
11 the confirmation in the Senate Commerce Committee.

12 Q Sherpa for getting people through  
13 confirmation in the Senate Commerce meeting.

14 Can you tell me what Sherpa means as you  
15 use that term?

16 A Yeah. It's a colloquial term. It's  
17 basically a person that helps the nominee, and in  
18 my case, I had two nominees that were  
19 being -- would be considered by the  
20 Senate Commerce Committee. So you advise them on,  
21 you know, what the different members are going to  
22 care about, what the general subject matter issues

1 are. As former staff for the committee, I was  
2 familiar with the issues that would be of  
3 importance to the members of the committee, so  
4 that's why I was asked to do the job.

5 Q You mentioned that you were the Sherpa  
6 for nominees through the Senate Commerce  
7 Committee. I take it one of those was  
8 Secretary Ross?

9 A Secretary Ross and Deputy Secretary  
10 Todd Riggins.

11 Q And did your responsibilities on the  
12 transition team include anything other than the  
13 Sherpa role you've just described?

14 A No.

15 Q Did you work on the campaign, at all --  
16 the presidential campaign for the 2016  
17 presidential --

18 A I did not.

19 Q What -- tell me a little bit more about  
20 your role as Sherpa for the Secretary.

21 A Well, it involved setting up meetings  
22 with members of the committee, advising the

1 Secretary on subject matter that  
2 Department of Commerce handles and that the  
3 committee cares about. My particular areas of  
4 expertise are fisheries and telecommunications,  
5 and so those are two rather arcane but rather  
6 important areas of the Senate Commerce Committees  
7 jurisdiction.

8 I've also, as former legislative director  
9 for Senator Stevens, basically covered all of the  
10 issues in front of the committee, so aviation,  
11 space, science issues, climate change, all of  
12 those.

13 Q And what were the specific issues that  
14 you briefed Secretary -- or then nominee Ross on?

15 A Essentially, everything that the  
16 department covers across the board, including the  
17 census, to the extent I had background.

18 Q Okay. And tell me -- I want to ask you a  
19 couple questions about that. But before we do, in  
20 addition to preparing the Secretary -- or the  
21 nominee, I should say --

22 A Right.

1           Q    -- for his meetings and his hearing, did  
2    you have any role in developing policy positions  
3    for the incoming administration?

4           A    Not in that sense, no.

5           Q    Not in what sense?

6           A    Not in -- no. I was not involved in the  
7    policy discussions. There were different teams  
8    handling that.

9           Q    Okay. You were not -- you're not  
10   involved in developing policy?

11          A    Correct.

12          Q    And did you participate in any policy  
13   meetings, at all?

14          A    No.

15          Q    Okay. You mentioned that among others,  
16   you briefed the Secretary on Census Bureau  
17   matters; is that right?

18          A    Right. For example, doing the census in  
19   Alaska is handled differently than the rest of the  
20   census.

21          Q    How so?

22          A    Well, they start it in January so that

1     you don't -- in a lot of the remote villages, if  
2     you tried to do the census on census day, the  
3     rivers would be impassable. So people would be  
4     able -- unable to get in and out to get to the  
5     census.

6             So that is an area that Senator Stevens  
7     spent a lot of time on, that, and postal service  
8     and some other issues unique to Alaska, so --

9             Q     And what other census-related issue did  
10    you prepare the nominee -- and when I say the  
11    nominee, I mean the nominee Secretary Ross. I'm  
12    not talking now about the deputy secretary  
13    nominee.

14            A     Right. Mostly --

15            Q     What are -- I'm sorry. Let me just  
16    finish the question for the clarity of the record.

17                   What other census-related issues did you  
18    prepare future Secretary Ross on in advance of his  
19    confirmation hearing?

20            A     Largely, the size of the budget, the fact  
21    that it had to be conducted based on a certain  
22    schedule, and that it would require a large ramp

1 up of personnel.

2 Q And this was because the -- when you say  
3 it would require a large ramp up, what would  
4 require a large ramp up?

5 A Conducting the census.

6 Q Okay.

7 A You, basically, have to hire about half a  
8 million part-time workers.

9 Q Got it.

10 Did you have any discussion with  
11 Secretary Ross when he was nominee regarding the  
12 citizenship question?

13 A No.

14 Q Okay. And when I say the citizenship  
15 question, you understand that I mean the inclusion  
16 of a citizenship question on the 2020 census?

17 A I took that to be your meaning, yes.

18 Q Thank you.

19 You mentioned you also were involved as  
20 the Sherpa for the deputy secretary nominee?

21 A Correct.

22 Q And tell us about any briefings that you

1 gave the deputy -- the then deputy secretary  
2 nominee regarding any Commerce Department matters?

3 A Again, basically, the same subject  
4 matter. The Secretary -- the only difference  
5 being that the Secretary typically asked more  
6 questions than the deputy secretary nominee did.

7 Q Did you brief them -- at the same time or  
8 did you brief them in separate meetings?

9 A No. They were on separate tracks.

10 Q And then -- I take it -- you testified  
11 you took them up for meetings on the hill.

12 A Correct.

13 Q And did you take the Secretary and the  
14 deputy secretary up together or separately?

15 A Separately.

16 Q How many -- how many Hill meetings do you  
17 recall going to with the Secretary when he was the  
18 nominee?

19 A Well, we met with every member of the  
20 committee, so I think that's about -- I don't  
21 know -- somewhere in the vicinity of 30. I'd have  
22 to go pull the list of the committee -- we met

1 with every member of the committee. We may have  
2 met with a couple of them twice if they had  
3 follow-up questions.

4 Q And then did you --

5 A And then there were a few members who  
6 were -- who had either just rolled off the  
7 committee or, obviously, the leader -- you know,  
8 leadership, so Leader McConnell and Mr. Schumer  
9 are not on the committee, but we, obviously, met  
10 with them, as well.

11 Q Okay.

12 A So I don't know, 35 meetings in all.

13 Q Okay. And did you meet with any staff  
14 members on the committee outside of staff who  
15 would have attended meetings with the senators?

16 A In one case, with Senator Nelson, we met  
17 with the staff prior to meeting with the Senator.  
18 But, otherwise, yes, the staff was always there  
19 with the member.

20 Q Okay. And in any of the meetings that  
21 you had with senators or staff during the  
22 confirmation process --

1 A Yeah.

2 Q -- did anyone ask you about the  
3 citizenship question?

4 A Not that I recall.

5 Q Okay. And did you raise the citizenship  
6 question in any of those conversations?

7 A Not that I recall.

8 Q And did the Secretary raise the  
9 citizenship question in any of those  
10 conversations?

11 A Not that I recall.

12 Q Okay. In any of the meetings that you  
13 had with members and the deputy secretary nominee,  
14 did any of the members ask you about the  
15 citizenship question?

16 A Not that I recall.

17 Q And did you raise the citizenship  
18 question with any of the members?

19 A Not that I recall.

20 Q And did the deputy secretary nominee  
21 raise the citizenship question with any of the  
22 members?

1           A     Not that I recall.

2           Q     The -- let me go back one second to when  
3     you joined the transition team. How did you come  
4     to join the transition team?

5           A     I was contacted by a former colleague who  
6     was tasked with setting up the Sherpa teams.

7           Q     Who was that?

8           A     Christine Ciccone.

9           Q     Can you spell that for the record?

10          A     Well, Christine, C-H-R-I-S-T-I-N-E. And  
11     then Ciccone, I think is C-I-C-C-O-N-E.

12          Q     And you mentioned Christine Ciccone was a  
13     former colleague?

14          A     Correct.

15          Q     Where had you worked together?

16          A     She worked as staff on the governmental  
17     affairs committee when Senator Stevens was  
18     chairman.

19          Q     And what was her role on the transition  
20     team?

21          A     Setting up the Sherpa meetings.

22          Q     Okay. So between -- shortly after

1 Thanksgiving and inauguration, your only role on  
2 the transition team was as the Sherpa to the  
3 Commerce committee?

4 A Right.

5 Q And your only functions as Sherpa to the  
6 Commerce committee included the functions that  
7 we've just discussed with regard to the  
8 Commerce Secretary nominee and the deputy  
9 secretary nominee; is that correct?

10 A Right. We were responsible for prepping  
11 them for the meetings and assisting with the  
12 questions for the record --

13 (Thereupon, the court reporter  
14 clarified.)

15 THE WITNESS: Questions for the record  
16 that came out.

17 BY MR. COLANGELO

18 Q And --

19 A And hearing prep.

20 Q Great. So let's take those separately.

21 Did you receive any questions for the  
22 record -- well, let's do the hearing first.

1           Do you remember when the Secretary's  
2 nomination was?

3           A     Well, when his nom- -- he was nominated  
4 before I came on board, so --

5           Q     Okay. If I told you he was nominated on  
6 November 30, 2016, would that sound about right?

7           A     Yeah. It sounds right.

8           Q     And your recollection is you came on  
9 board shortly after he was nominated?

10          A     It was at the end of November, so he may  
11 have been -- they may have brought me on without  
12 knowing who it was, but it was right about that  
13 time frame.

14          Q     Okay. And when was the Secretary  
15 confirmation hearing?

16          A     It was in early January, I believe.

17          Q     Okay. Would January 18, 2017 sound about  
18 right?

19          A     Yeah. When's the -- the inaugural [sic]  
20 is on the 20th --

21          Q     Inauguration was on the --

22          A     Yeah. Sounds about right. Shortly

1 before the inauguration.

2 Q So you mentioned that you assisted with  
3 questions for the record?

4 A Yes.

5 Q Can you describe what questions for the  
6 record, are?

7 A Well, in the course off the nomination  
8 hearing, many members then send follow-up  
9 questions, particularly, Democratic members send  
10 follow-up questions. So those -- the typical  
11 process for a nominee is in order to get  
12 confirmed, you have to complete answering all the  
13 information that the committee requests.

14 Q And those questions for the record, I  
15 take it those were all submitted after the  
16 confirmation hearing?

17 A If I remember right -- and thank you for  
18 the reminder that it was on the 18th -- the  
19 committee gave the members until, I think it was  
20 midnight that night to submit questions for the  
21 record, and then we -- the objective was to try to  
22 get the questions answered in time that they could

1 be confirmed shortly after the President's  
2 confirmation.

3 Q Got it. Okay.

4 A So --

5 Q But you didn't get any questions for the  
6 record before his hearing on the 18th, did you?

7 A No.

8 Q And your recollection is that all of the  
9 questions for the record, would have come in on  
10 the 18th after the hearing?

11 A I think that's correct, yes.

12 Q And you assisted in preparing responses  
13 to those --

14 A Correct.

15 Q -- QFRs?

16 A Yes.

17 Q If I say QFRs, will you understand --

18 A I --

19 Q -- I mean questions for the record?

20 A I will. Yes.

21 Q And how did you prepare responses to  
22 those QFRs?

1           A     Typically, the Secretary would take a  
2     first pass at them, and then I would follow in.  
3     And if it was a question he really didn't -- was  
4     unfamiliar with, then I would try to provide  
5     information, run that by him. And if he concurred  
6     in the response, we would send that.

7           Q     Did you work with any other members of  
8     the transition team on the responses to the QFRs?

9           A     No.

10          Q     Did you work with any members of the  
11     Commerce Department -- any employees of the  
12     Commerce Department on the responses of the QFRs?

13          A     No. Because he was not part -- we  
14     were -- I mean, we were in that awkward period  
15     where you're transitioned but you're not part --  
16     we could ask -- we could send questions, but given  
17     the timing, it was highly unlikely that we were  
18     going to get a quick response. There were people  
19     standing by to try to assist, but we -- there  
20     wasn't a very well-defined process for getting  
21     that information back and forth.

22          Q     Okay. Did you have any interaction with

1 employees at the Commerce Department from the time  
2 that you joined the transition team until  
3 Inauguration Day?

4 A No. There was pretty large firewalls  
5 between the two.

6 Q Okay.

7 A There were a couple members of the  
8 transition who were allowed to go in. They were  
9 sort of -- I forget when they call them beach head  
10 team --

11 Q Uh-huh.

12 A -- but none of them were the same people  
13 doing the Sherpa process, so it was a little bit  
14 awkward.

15 Q And did any of those QFRs that the  
16 Secretary received after his confirmation hearing  
17 relate to the citizenship question?

18 A No.

19 Q In the period after his confirmation  
20 hearing on January 18th, did you have any  
21 discussions with the Secretary about any  
22 Commerce Department matters, other than the

1 responses to the QFR?

2 A Other than -- no. I mean, other than  
3 basic personnel as he was trying to figure out,  
4 you know, who he was bringing on board.

5 Q Okay.

6 A That was all the discussion.

7 Q Okay. So in that period after his  
8 confirmation hearing and before he was confirmed,  
9 did you have any discussions about policy matters?

10 A No.

11 Q Okay. Did you -- after the confirmation  
12 hearing, was there a meeting with the Secretary  
13 and the transition team?

14 A I imagine there was, but I don't recall  
15 one.

16 Q Okay. So you don't remember  
17 leaving the -- leaving the Hill and going to a  
18 meeting anywhere in Washington with  
19 Commerce Department transition team members?

20 A Not that I recall, no.

21 Q And do you remember, was Wendy Teramoto  
22 at that confirmation hearing?

1           A     Yes.

2           Q     Do you remember a meeting that you and  
3 Wendy and the Secretary attended on the 18th after  
4 the confirmation hearing?

5           A     Not with any particularity, no.

6           Q     Okay. Mr. Comstock, tell me what your  
7 current position is?

8           A     I'm the deputy chief of staff and  
9 director of policy.

10          Q     Deputy chief of staff and director of  
11 policy.

12                When did you become the director of  
13 policy?

14          A     On January 31st --

15          Q     January 31st.

16          A     -- 2017.

17          Q     The -- was January 31, 2017 your first  
18 day in the office at the Commerce Department?

19          A     Yes. If I'm recalling correctly, that  
20 that was Monday, yes. It was the 30th or 31st.  
21 It was whatever the Monday was at the end of  
22 January.

1 Q Would it help if I told you that Monday  
2 was the 30th?

3 A I'll take your word for it.

4 Q Okay. So your recollection is, then,  
5 that --

6 A They start you at the beginning of a pay  
7 period is the way it works --

8 Q Okay.

9 A -- in the federal.

10 Q So your first day was January 30, 2017?

11 A Correct.

12 Q So between Inauguration Day on the 20th  
13 and the 30th, you weren't physically present at  
14 the Commerce Department?

15 A I was not.

16 Q Did you have any conversations with any  
17 Commerce Department staff during that time period?

18 A Well -- no. Well, other than the  
19 gentleman who was helping with processing my  
20 paperwork.

21 Q Personnel onboarding?

22 A Right.

1 Q Other than the personnel onboarding, did  
2 you have conversations --

3 A No.

4 Q -- with anyone at the Commerce Department  
5 between January 20th and January 30th of 2017?

6 A No.

7 Q Did you have any conversations with  
8 Secretary Ross between January 20th and  
9 January 30th of 2017?

10 A Nothing particularly that I recall, but  
11 I'm sure I talked to him, yes.

12 Q Okay. You mentioned that your title is  
13 deputy chief of staff and director of policy.

14 When did you became deputy chief of  
15 staff?

16 A In April of this year.

17 Q So from January 30, 2017 until  
18 April 2018, you were director of policy?

19 A Correct.

20 Q Is director of policy a position within  
21 the Office of the Secretary?

22 A Yes.

1 Q And is that the same as director of  
2 policy and strategic planning?

3 A Correct.

4 Q Who do you report to?

5 A The Secretary.

6 Q Directly to the Secretary?

7 A Well, and to the chief of staff and to  
8 the deputy secretary.

9 Q Okay. Was there a chief of staff on  
10 January 30, 2017?

11 A There was not.

12 Q Okay. So until there was a chief of  
13 staff, who would you say you reported to?

14 A Well, until the Secretary came on board,  
15 sort of no one.

16 Q Okay.

17 A No. The -- the acting deputy secretary,  
18 obviously, was the career official who was in  
19 charge of making any final decisions for the  
20 department, so --

21 Q And can you identify her for the record?

22 A Ellen Herbst.

1           Q    When did the Secretary come on board as  
2   Secretary?

3           A    Again, I think his confirmation, if I  
4   remember right, was the 28th of February. And,  
5   again, you'd have to confirm that with records.

6           Q    Okay. So between January 30th and  
7   February 28th of 2017, you were director of the  
8   Office of Policy and Strategic Planning?

9           A    Right.

10          Q    Notionally, you reported to the chief of  
11   staff and the Secretary, but neither of those --

12          A    Weren't there.

13          Q    -- roles had been filled?

14          A    Correct.

15          Q    And so you reported to nobody?

16          A    Well, no. Again, to the extent that any  
17   decisions needed to be made, they were made by the  
18   career officials who were there. I would advise  
19   those career officials as to what my best guess of  
20   administration's policy on a particular matter  
21   would be.

22          Q    In your position as director of the

1 policy office, how are you assigned work?

2 A Whatever the Secretary decides he wants  
3 me to work on.

4 Q Do you have a job description?

5 A Yes. I'm sure there is a job deception.

6 Q Have you seen a job description for that  
7 position?

8 A Not that I recall.

9 Q Do you have any regular or standing  
10 meetings with the Secretary?

11 A No standing meetings. I meet with him on  
12 a daily basis.

13 Q Do you -- is it a scheduled daily  
14 meeting?

15 A No.

16 Q So you don't see him at the same time  
17 every morning or afternoon?

18 A I do not.

19 Q And the Secretary doesn't have a daily  
20 senior staff meeting?

21 A No.

22 Q Are your daily meetings with him

1 scheduled or are they ad hoc?

2 A They're both. I mean, if there's -- if  
3 there's a meeting on his schedule for which I have  
4 relevant expertise or they would like my advice  
5 and counsel, I'm added to that meeting. If  
6 there's a meeting we need to have with him because  
7 something has come up, then we just -- when he's  
8 available, we go meet with him.

9 Q You said if they would like your advice  
10 or counsel, who is they?

11 A They meaning the Secretary and chief of  
12 staff.

13 Q And can you identify the chief of staff  
14 for the record?

15 A The chief of staff currently is  
16 Wendy Teramoto.

17 Q And there was no chief of staff in  
18 January of 2017?

19 A Correct.

20 Q When did she become chief of staff?

21 A I think she officially became chief of  
22 staff in August 2018.

1 Q 2018?

2 A Sorry. 2017.

3 Q So you mentioned you work on whatever the  
4 Secretary wants you to work on?

5 A Correct.

6 Q How does he identify matters that he  
7 wants you to work on?

8 A He says, Earl, can you get this done? Or  
9 we attend this meeting, and he says, can you  
10 follow up on that?

11 Q And how do you keep the Secretary  
12 informed about what you are doing on important  
13 matters or on assignments that he's given you?

14 A By email, by oral briefing, and sometimes  
15 by memos.

16 Q How do you decide whether you're going to  
17 update Secretary Ross by email, by briefing or by  
18 memo?

19 A Just depends on the time frame, the speed  
20 of which I need to get something to him, how  
21 extensive it is. You know, if there's a lot of  
22 information that it would be helpful for him to

1 have and review in advance, then I typically would  
2 try to do a memo.

3 Q How big is the policy office?

4 A We currently have six people.

5 Q Six people.

6 And what are those individuals'  
7 functions?

8 A Well, the policy office existed prior to  
9 my arrival, and it's staffed, essentially, by  
10 career -- largely by career staff. So their  
11 primary function is to assist me and the Secretary  
12 in identifying who can get something done within  
13 the department. They also review memorandums and  
14 correspondence that comes in from the different  
15 bureaus to try to identify if they're -- you know,  
16 flag policy issues, flag things they think might  
17 be concerning to the Secretary. So they're really  
18 an interface to help us figure how to manage the  
19 leviathan.

20 Q Manage the leviathan?

21 A Yeah.

22 Q And by leviathan, can you explain what

1     you mean?

2           A     The Department of Commerce. It's 47,000  
3     people who all report to work every day, and they  
4     all do a great job. And when you're trying to  
5     figure out what everybody's doing and make sure  
6     that what they're doing is consistent with the  
7     administration's policy, that's a large task.

8           Q     Can you tell me what the professional  
9     background is of the six people on your staff in  
10    the policy office?

11          A     Most of them are detailed from the  
12    different departments, so they have some  
13    experience or expertise in that particular  
14    department.

15          Q     Do you have anybody in the policy office  
16    detailed from the Census Bureau?

17          A     We have somebody from the economics and  
18    statistics administration which oversees the  
19    Census Bureau.

20          Q     You don't have anybody detailed to the  
21    policy from the Census Bureau; is that correct?

22          A     Not that I'm aware of.

1           Q    And is the individual from ESA an  
2 economist?

3           A    Good question. I don't know.

4           Q    Okay. Have you seen the resumes of the  
5 people who work in your office and report to you?

6           A    No.

7           Q    Were all of them there when you became  
8 the director of the policy office?

9           A    Well, not all the current ones, but, yes,  
10 everybody was there that was working for me when I  
11 started, yeah.

12          Q    I'm not sure I understand that answer.

13          A    In other words, they switch. So, for  
14 example, the person from NIST has left. I have an  
15 Army -- a detailee from the Army logistics command  
16 who comes in every year. I'm now on my third  
17 person for that job.

18          Q    So would it be fair to say that you have  
19 six people in the policy office, and those people  
20 are details from different bureaus or agencies  
21 within the Department of Commerce, and they're on  
22 a fixed term and when one person leaves, another

1 person from that bureau comes in?

2 A Essentially, yes. I mean, the fixed term  
3 is somewhat flexible. But, for example, the  
4 person doing the National Oceanic and Atmospheric  
5 Administration has now moved on to be one of the  
6 budget directors for them.

7 So it's a position that's seen by the  
8 bureaus as something that could be good for  
9 leadership development. So they'll send somebody  
10 up and they'll work there for a year. The person  
11 who did the National Institutes of Standards  
12 Technology, NTIA, et cetera, has now moved back to  
13 NIST to take a more senior position there.

14 Q And do you have any regular -- strike  
15 that.

16 Does the policy office have any regular  
17 functions, other than whatever the Secretary wants  
18 us to work on?

19 A Well, yeah. Each one of the policy  
20 office people is responsible for managing their  
21 area, alerting me and the Secretary to issues that  
22 are coming up in those particular bureaus. So

1     it's a monitoring function in some ways. And so  
2     they're not necessarily developing policy for  
3     those bureaus as much as they are keeping track of  
4     what the bureaus are doing.

5           Q     Okay. Is it unusual for the policy  
6     office to develop policy for a bureau?

7           A     Not if we're developing for the  
8     Secretary, no.

9           Q     You just said, I believe, your testimony  
10    was --

11          A     What I'm saying is the staff that works  
12    that --

13          Q     I'm sorry. Hang on. Just let me finish  
14    my question.

15                 Your testimony was, so they're not  
16    necessarily developing policy for those bureaus,  
17    as much as they are keeping track of what the  
18    bureaus are doing?

19          A     Correct.

20          Q     So is it usual for the policy office to  
21    develop policy as opposed to keeping track of  
22    policy?

1 A No.

2 Q Please explain.

3 A Well, again, it depends on who you're  
4 talking about at the policy office. If you're  
5 talking about my staff at the policy office, they  
6 do not, as a general rule, develop the policy.  
7 The policy is generally developed by the Secretary  
8 with input from me and with input from them when  
9 needed.

10 Q And not with input from the bureaus?

11 A Well, absolutely. We go back and forth  
12 with the bureaus all the time.

13 Q You mentioned that the individuals in the  
14 policy office monitor specific areas; is that  
15 right?

16 A Correct.

17 Q Do you have somebody assigned to monitor  
18 the Census Bureau?

19 A Yes.

20 Q Who is that?

21 A David Langdon.

22 Q And what is David Langdon's background?

1           A     He is in the Economic & Statistics  
2     Administration and knows -- knows the people down  
3     there, knows how to get stuff done, so --

4           Q     Okay. And did you hire Mr. Langdon?

5           A     I did not.

6           Q     Was he in the policy office when you got  
7     there?

8           A     He was.

9           Q     How often do you interact with the  
10    Census Bureau?

11          A     Directly? Depends on the issue. Like  
12    when we were doing the lifecycle cost estimate,  
13    quite a bit. When we were doing the census -- the  
14    citizenship question, interacted with the staff  
15    there -- the senior staff on a fairly frequent  
16    basis.

17          Q     Do you have any standing meetings with  
18    the Census Bureau?

19          A     No. Well, other than when they come and  
20    brief the Secretary sort of on a monthly basis,  
21    I'll attend those meetings.

22          Q     Okay. I'll come back to the monthly

1 briefings in a minute.

2 In your job as director of policy, do you  
3 a -- have any role with regard to interacting with  
4 the White House?

5 A Sure. I'm the primary person that gets  
6 contacted when they've got a document they're  
7 trying to circulate and clear.

8 Q When the White House has a document  
9 they're trying to circulate and clear?

10 A Correct.

11 Q Okay. And so who would contact you in  
12 the course of circulating and clearing a document?

13 A Staff Secretary.

14 Q And what kind of documents would be  
15 circulated and cleared through the Commerce  
16 Department from White House?

17 A Op eds, presidential memorandums,  
18 executive orders.

19 Q And how often does the White House ask  
20 you to clear a document?

21 A Sometimes I get to clear multiple  
22 documents in a day.

1 Q So daily?

2 A Yes.

3 Q Okay. And when you get a document from  
4 the White House to clear, what do you do?

5 A I usually send it off to the affected  
6 bureaus and ask for their input.

7 Q And how much turnaround time do you  
8 typically have if you get a document from the  
9 White House to clear?

10 A It ranges from less than two hours to a  
11 week and a half.

12 Q And --

13 A Typically, in that ballpark.

14 Q And when you get a document from the  
15 White House to clear, how is it transmitted to  
16 you?

17 A By email.

18 Q From the Office of the Staff Secretary?

19 A Yeah.

20 Q Is it ever transmitted to you directly  
21 from a policy office within the White House?

22 A I'm not sure what you mean.

1           Q     Would you get a document from the  
2     Domestic Policy Council directly or from the  
3     National Economic Council directly, or would you  
4     always get a document from --

5           A     If we were working on something and  
6     there's something relevant that they would need to  
7     send it, sure.

8           Q     So you get documents to clear from the  
9     White House and they can come from either the  
10    Staff Secretary or from another office within the  
11    White House?

12          A     Sure. I mean, to give you an example,  
13    working on the steel proclamation, having to do  
14    with Section 232 tariffs, there's all kinds of  
15    interaction back and forth with the White House,  
16    White House -- Office of White House Counsel, NEC,  
17    CEA. I mean, it just depends on who's working on  
18    an issue.

19          Q     And for the record, can you say what CEA?

20          A     Counsel of Economic Advisors.

21          Q     And, for the record, can you say what  
22    NEC?

1           A     National Economic Council.

2           Q     Great.

3                     Did you have any interaction with the  
4     White House on the census citizenship question?

5           A     No.

6           Q     Did you have any interaction with the  
7     White House on the Census Bureau, at all?

8           A     Not that I recall.

9           Q     What is your typical -- do you have any  
10    typical role with regard to interacting with other  
11    cabinet agencies?

12          A     Again, if there's an issue that the  
13    Secretary is working on and we're trying to  
14    communicate with the other departments, I'll often  
15    be asked to track down somebody in the other  
16    department to whom we can have a conversation.

17          Q     So, yes, you do typically have a role  
18    interacting with other cabinet agencies?

19          A     Yes.

20          Q     On -- is that role on policy matters --

21          A     Yes.

22          Q     -- exclusively?

1           A     I'm not sure what you mean by  
2     exclusively.

3           Q     Budget, legal --

4           A     Yeah.

5           Q     -- any other --

6           A     I mean, we talk all the time with OMB,  
7     for example, on our budget. I'm involved in that.  
8     Involved in strategic planning for the department.  
9     You know, we were working on a revision to a sugar  
10    agreement which involved a lot of interaction with  
11    the Department of Agriculture, so dealt heavily  
12    with Secretary Perdue and his senior staff on that  
13    matter. Just depends on the issue.

14          Q     And do you have -- in your role as  
15    director of the policy office, do you have typical  
16    interaction with Congressional staff?

17          A     On occasion, yes.

18          Q     How much would you say you interact with  
19    Congressional staff?

20          A     Well, depending on the issue, sometimes  
21    quite frequently. Sometimes -- usually, it's  
22    often when either their office -- like, for

1 example, on steel tariffs, we've had quite a bit  
2 of interaction with Chairman Brady and his staff,  
3 senior staff on the Ways and Means Committee would  
4 call frequently. On a red snapper issue, the  
5 staff of Mr. Scalise called. So it just depends  
6 on the issue.

7 Q Did you have any interaction with  
8 Congressional staff on the citizenship question?

9 A I did not.

10 Q Are you aware of anyone in the  
11 Commerce Department who did have interaction with  
12 Congressional staff on the citizenship question?

13 A Not that I recall.

14 Q Do you interact, at all, with members of  
15 Congress in your role as the director of policy?

16 A I do on occasion, yes.

17 Q Did you interact with any members of  
18 Congress on the citizenship question?

19 A I did not.

20 Q Is it typical in your function as  
21 director of the policy office to interact with  
22 outside stakeholders and nongovernmental

1 stakeholders?

2 A I take meetings when the Secretary can't,  
3 yes.

4 Q Do you ever take meetings independent of  
5 filling in for the Secretary?

6 A Yeah, on major policy issues I'm working  
7 on.

8 Q Did you meet with outside stakeholders on  
9 the citizenship question?

10 A No.

11 Q You didn't attend any meetings, including  
12 with the Secretary, on the citizenship question --

13 A I --

14 Q -- with outside stakeholders?

15 A With the outside stakeholders groups, no.

16 Q When did you first hear about the notion  
17 of adding a question about citizenship to the  
18 decennial census?

19 A Sometime in -- shortly after the  
20 confirmation.

21 Q And who did you hear it from?

22 A The Secretary.

1           Q     And the Secretary was confirmed on  
2     February 28, 2017; is that right?

3           A     I -- like I said, you'd have to confirm  
4     that date, but I think that was the date, yes.

5           Q     And what did the Secretary tell you about  
6     the idea of adding a question on citizenship to  
7     the census during that first conversation shortly  
8     after his confirmation?

9           A     Again, the exact time frame of the  
10    conversation, I can't tell you. It was sometime  
11    in that spring period. I don't recall the  
12    details. I think he simply inquired as to why  
13    don't we have a citizenship question on the  
14    census.

15          Q     Okay. And what did you say to him when  
16    he inquired?

17          A     Short answer, I don't know. I'll check.

18          Q     Okay. And would that interaction be  
19    reflected in any documents?

20          A     I don't -- I don't believe so, but it's  
21    possible it's in an email exchange.

22               MR. COLANGELO: Can we mark as Exhibit 1,

1 Comstock Exhibit 1?

2 (Plaintiffs' Exhibit 1, Email, was  
3 marked.)

4 MR. COLANGELO: I'm handing counsel  
5 Document Bates-stamped 1410.

6 BY MR. COLANGELO:

7 Q And I'll hand the document to the  
8 witness.

9 A Thank you.

10 Q Mr. Comstock, let me take that back and  
11 I'll give you the marked copy.

12 Mr. Comstock, have you seen this email  
13 before?

14 A Let's see it. It doesn't appear I was  
15 copied on it, so, no.

16 Q And you weren't shown this email in  
17 preparation for your deposition?

18 A No.

19 Q Okay. And this is an email from  
20 David Langdon to Ellen Herbst dated  
21 February 22, 2017; is that right?

22 A Correct.

1           Q     And you testified that David Langdon  
2 works for you in the policy office; is that right?

3           A     Correct.

4           Q     And Ellen Herbst at the time was the  
5 acting deputy secretary; is that right?

6           A     Right.

7           Q     Do you see in this email where  
8 Mr. Langdon asks Ms. Herbst who is organizing the  
9 Census Bureau briefing for Earl and team?

10          A     Yeah.

11          Q     Okay. And take a look at the subject  
12 line, "Census Bureau briefing for OS politicals."

13                 Does OS stand for Office of the  
14 Secretary?

15          A     Yes.

16          Q     Now, in the second paragraph of this  
17 email, you see the line where Mr. Langdon says,  
18 "Jim S. reminded me about the upcoming  
19 Congressional notification of decennial census and  
20 ACS topics and the need to gauge Earl's interest  
21 in it." I believe he meant Earl's interest in it.

22                 Do you see that line?

1           A     I see it, yes.

2           Q     And I take it that you would assume that  
3     Earl refers to you?

4           A     I'm not aware of another Earl that works  
5     at the department at the moment, so --

6           Q     Okay. Certainly, not another Earl that  
7     works at the Office of Secretary who's a political  
8     appointee?

9           A     Correct.

10          Q     And then Mr. Langdon then says, "Earl is  
11     very" -- underlined very -- "interested and thinks  
12     the Secretary will be, as well."

13                 Do you see that?

14          A     Yes.

15          Q     On February 2nd of 2017 would have been  
16     your fourth day on the job; is that right?

17          A     Yep.

18          Q     Okay. And do you recall telling  
19     Mr. Langdon that you were very interested in  
20     Congressional notification of decennial ACS  
21     topics?

22          A     I recall telling him that we were very

1 interested in the census and getting a briefing on  
2 it.

3 Q Okay.

4 A I don't specifically recall that, but --

5 Q Were you very interested in the decennial  
6 topics on February 2, 2017?

7 A What probably would have caught my  
8 attention is if we had to notify Congress about  
9 something, I would want to make sure we were up to  
10 speed on what we needed to notify them about.

11 Q As of this date, February 2, 2017, do you  
12 recall if you had already had discussions  
13 regarding adding a citizenship question to the  
14 census?

15 A I don't recall having a discussion before  
16 that.

17 Q Mr. Langdon's email says, quote, it would  
18 make sense for John Thompson to touch on this  
19 topic in his overview briefing and then to have a  
20 follow-up briefing very soon.

21 Was Mr. Thompson the Census Bureau  
22 director at the time?

1           A     Yes.

2           Q     And did that overview briefing take place  
3     that's referred to in this email?

4           A     I imagine it did.

5           Q     Do you remember when that happened?

6           A     I couldn't tell you.

7           Q     Do you keep a calendar?

8           A     Yeah.  There's an electronic calendar  
9     somewhere.

10          Q     And your calendar records the meetings  
11     that you attend?

12          A     Generally, yes.

13          Q     Would it typically record a meeting with  
14     the Census director?

15          A     It would depend if somebody sent me a  
16     calendar invite.

17          Q     Would somebody typically send you a  
18     calendar invite for a meeting with the Census  
19     director?

20          A     At that point in time, possibly.  Yeah, I  
21     don't know.

22          Q     The email refers, also, to a follow-up

1 briefing very soon. Do you remember that  
2 follow-up briefing?

3 A I don't have any specific recollection of  
4 that, no.

5 Q If there was a follow-up briefing on the  
6 question of Congressional notification of  
7 decennial topics, would that be reflected in your  
8 calendar?

9 A Again, possibly. But unless I entered it  
10 myself, which I may or may not have done, I don't  
11 know.

12 Q Do you have an assistant who adds  
13 meetings to your calendar?

14 A I do now, but I didn't then.

15 Q When did your assistant start?

16 A I think I finally got an assistant in  
17 May, maybe.

18 Q Okay. And before May, is it your  
19 testimony that meetings didn't appear on your  
20 calendar unless you put them there or somebody  
21 sent a calendar invite to you?

22 A Correct.

1           Q     We'll mark this exhibit Comstock  
2     Exhibit 2.

3                     (Plaintiffs' Exhibit 2, Email, was  
4     marked.)

5     BY MR. COLANGELO:

6           Q     We are marking as Comstock 2 Document  
7     Bates numbered 2521.

8                     Mr. Comstock, take a look at this email.  
9     You've seen this email before, right?

10          A     I sent it.

11          Q     So that's a yes?

12          A     Yes.

13          Q     Were you shown this email in preparation  
14     for your deposition today?

15                     MR. GARDNER: I'm going to object and  
16     instruct the witness not to answer on the grounds  
17     of attorney work product.

18                     I'm happy to let you answer when was the  
19     last time you saw the document.

20                     But you're asking about documents counsel  
21     may have shown that would be protected.

22     BY MR. COLANGELO:

1           Q     When's the last time you saw this  
2     document, Mr. Comstock?

3           A     Yesterday.

4           Q     And do you see the subject line of this  
5     email is your question on the census?

6           A     Yep.

7           Q     Okay. And Secretary Ross was confirmed  
8     on February 28th, I think we agreed; is that  
9     right?

10          A     Like I said, if that's the date, yes.

11          Q     Okay. So this would have been  
12     Secretary Ross's eleventh day on the job as  
13     Commerce Secretary, give or take?

14          A     Approximately, yes.

15          Q     And the subject line of this email is  
16     your question on the census?

17          A     Right.

18          Q     What was the Secretary's question on the  
19     census?

20          A     He appeared to have asked whether  
21     undocumented people were counted in the census.

22          Q     Okay. And how did he ask you that

1 question?

2 A I don't recall. Probably at a meeting,  
3 possibly following up on a census briefing. I  
4 don't know.

5 Q Have you checked your calendar for  
6 March 10, 2017 recently?

7 A I was going to say I probably haven't  
8 checked it from March 10, 2017 for that particular  
9 date.

10 Q Okay.

11 A By the way, I wanted to add one point.  
12 On the prior document, you need to understand that  
13 at that time, there were a number of questions  
14 that the prior administration had requested be  
15 placed, potentially, on the census that would have  
16 been involved in that notification. So that would  
17 have been a reason of why I would have been  
18 interested in that, on sexual orientation and  
19 gender identity. So that was an issue that was  
20 very at the forefront at the time of what to do  
21 about those requests.

22 Q So let's go back to Exhibit 2, your email

1 to Secretary Ross on Friday, March 10th. Do you  
2 know why the Secretary asked you whether  
3 undocumented people were counted?

4 A I have no idea.

5 Q Okay. Did he ask you whether noncitizen  
6 people were counted for apportionment purposes?

7 A Well, based on the answer, it appears he  
8 might have.

9 Q Appears he might have or appears he did?

10 A I couldn't tell you the answer on that.

11 Q Okay.

12 A I don't recall the question, so --

13 Q Okay. But you sent this email to the  
14 Secretary in response to a question?

15 A Yes.

16 Q And you would have presumably tried to  
17 make your answer responsive to his question?

18 A I generally do that, yes.

19 Q So you think it's likely that his  
20 question was about whether undocumented immigrants  
21 were counted for apportionment purposes?

22 A That's entirely possible, but he might

1 have also just asked do we count undocumented  
2 persons, and this is what I found on the Census  
3 website.

4 Q How do you think you found it on the  
5 Census website?

6 A By typing in census and going to their  
7 website and seeing what their FAQs say.

8 Q So you think you would have gone directly  
9 to the frequently asked questions page?

10 A That would not be unusual for me to do,  
11 yes.

12 Q This link you've identified at  
13 [www.census.gov](http://www.census.gov), that's the Census Bureau's  
14 frequently asked web page for Congressional  
15 apportionment; is that right?

16 A Again, without pulling it up, I couldn't  
17 tell you specifically what it says.

18 Q Okay. If I represent to you that if you  
19 pulled up that website, it would say frequently  
20 asked questions for Congressional apportionment,  
21 would that assist you?

22 A I'd be happy to take your word for it.

1           Q     So does that assist you in recalling that  
2     the Secretary asked whether noncitizens were  
3     counted for apportionment purposes?

4           A     And I have no recollection of the  
5     question, so I can only go by the answer.

6           Q     Okay. The email also includes a blog  
7     post from the Wall Street Journal; is that right?

8           A     Uh-huh.

9           Q     Okay. And your email to the Secretary  
10    says that this blog post, quote, confirms that  
11    neither the 2000s, nor the 2010 census asked about  
12    citizenship?

13          A     Correct.

14          Q     So does that lead you to conclude that  
15    the Secretary asked about whether the decennial  
16    census asks about citizenship?

17          A     That would be a reasonable supposition,  
18    based on the response.

19          Q     And this blog post is called the pitfalls  
20    of counting illegal immigrants; is that right?

21          A     Yep.

22          Q     And were you concerned on March 10, 2017

1 about counting illegal immigrants?

2 A I -- no, not personally.

3 Q Was the Secretary concerned on  
4 March 10, 2017 about counting illegal immigrants?

5 A Again, I have no recollection of the  
6 question, so I couldn't speculate as to what his  
7 concern was.

8 Q But you testified that a significant part  
9 of your job function involves answering questions  
10 from the Secretary on issues that matter to him,  
11 right?

12 A Correct.

13 Q And if he asked you a question, you would  
14 try to be responsive?

15 A Generally, yes.

16 Q You wouldn't ordinarily send him  
17 information that wasn't responsive to a question  
18 he asked, would you?

19 A Not -- not characterized this way, no.

20 Q So you testified a minute ago that the  
21 Secretary -- that you first heard about the notion  
22 of adding a question about citizenship to the

1 census when the Secretary raised it with you  
2 shortly after his confirmation. Does this email  
3 indicate to you that it was by March 10th that the  
4 Secretary first raised it with you?

5 A I wouldn't necessarily draw that  
6 conclusion from this email.

7 Q Would you draw the conclusion that it was  
8 later than March 10?

9 A No, I wouldn't. Again, this -- this  
10 question does not directly address -- it's a  
11 question about how -- who do we count, not whether  
12 or not -- and whether there's a citizenship  
13 question. So I don't know at this point whether  
14 he indicated he was interested in such a question,  
15 other than getting the factual information.

16 Q Okay. Who would know when the Secretary  
17 was interested in adding a citizenship question?

18 MR. GARDNER: Objection. Calls for  
19 speculation.

20 BY MR. COLANGELO:

21 Q You can answer.

22 A My counsel just objected, so why can --

1 would I answer?

2 Q So let me -- an additional ground rule  
3 that I -- let's cover one additional ground rule.  
4 I will ask questions and your job is to answer  
5 them fully and truthfully.

6 A Okay.

7 Q Your counsel may state objections if he  
8 finds my questions objectionable for a range of  
9 reasons. If he states an objection, you can,  
10 nonetheless, answer the question unless he  
11 instructs you not to answer.

12 Do you understand?

13 A Well, you used the word "can," which  
14 means that I have the discretion.

15 Am I instructed to answer the question  
16 notwithstanding his objection or is it -- should I  
17 follow my counsel's objection?

18 MR. GARDNER: You should do your best to  
19 answer the question posed to the extent you  
20 understand.

21 THE WITNESS: Thank you for the  
22 clarification.

1           Again, you'd have to ask the Secretary.

2       BY MR. COLANGELO:

3           Q     The -- the -- let's go back to Exhibit 2,  
4     subject line, your question on the census, and  
5     tell me how the Secretary's question was  
6     communicated to you?

7           A     It appears orally.

8           Q     Okay. Why do you say it appears orally?

9           A     Well, we did a very extensive email  
10    search, including the Secretary's email, and so if  
11    you don't have an email from him to me asking  
12    about this, and normally I would reply back if he  
13    had sent me an email asking me about this. So,  
14    therefore, I would conclude that it was oral.

15          Q     Okay. And you don't recall -- strike  
16    that.

17                Was that oral question in a meeting, on  
18    the telephone? How do you remember receiving that  
19    question?

20          A     I have no recollection.

21          Q     Okay. Your email says -- let me direct  
22    you to the first line of your message to the

1 Secretary. Quote, I was not able to catch anyone  
2 at their desk when I called the numbers I have for  
3 the Census Bureau from their briefing.

4 Do you see that?

5 A Yep.

6 Q Which briefing are you referring to?

7 A Apparently a briefing that we had with  
8 Census.

9 Q A briefing that you and the Secretary  
10 both had with the Census?

11 A Right.

12 Q Were you given any materials at that  
13 meeting?

14 A Quite possibly.

15 Q And was that briefing on March 10th?

16 A I have no idea.

17 Q Okay. If you -- if you -- would that  
18 briefing be reflected on your calendar?

19 A Again, it's possible. I -- I don't know.

20 Q Okay. Would it be reflected on the  
21 Secretary's calendar?

22 A Most likely, yes.

1 Q He does keep a calendar, correct?

2 A Well, he has somebody that keeps a  
3 calendar for him, yes.

4 Q And he had an assistant as of the day he  
5 started as Commerce Secretary, I assume?

6 A Correct.

7 Q Mr. Comstock, you sent your email to the  
8 Secretary on a Friday night after 8:30 p.m.; is  
9 that right?

10 A That appears to be the date stamp on  
11 here, yes.

12 Q Okay. And you sent it after you couldn't  
13 reach Census Bureau staff at their desks; is that  
14 right?

15 A Shocking at 8:30 that I could not reach  
16 them at their desk, yes.

17 Q So you got a question from the Secretary  
18 at the end of the work day; is that right?

19 A Quite possibly.

20 Q Was his question urgent?

21 A Again, I don't know. I don't recall when  
22 he asked me, and so this could have been something

1 I was catching up on at the end of the day. It  
2 could have been something that he had just called  
3 me on the phone about.

4 Q Okay. Who is Eric Branstad?

5 A Eric was the senior White House advisor  
6 at the time.

7 Q Tell me what senior White House advisor  
8 is.

9 A It's a position that basically helps  
10 with -- largely, with personnel coming over and  
11 also, ideally, was keeping us informed on what was  
12 going on at the White House side of things.

13 Q Is that the political appointee position?

14 A Yes, it is.

15 Q You said Mr. Branstad was the --

16 A Right.

17 Q -- senior White House advisor at the  
18 time?

19 A Correct.

20 Q Is he no longer in that role?

21 A That's correct.

22 Q Does he work at the Commerce Department

1 anymore?

2 A No. He does not.

3 Q Do you know when he left the  
4 Commerce Department?

5 A I think it was last spring. I think he  
6 worked there about a year.

7 Q Why did you copy Mr. Branstad on this  
8 email to the Secretary at 8:30 at night on a  
9 Friday about the census and citizenship?

10 A Because Eric was the, quote, senior  
11 political in the department at the time.

12 Q He was the senior political in the  
13 department at the time, okay.

14 Had Wendy Teramoto started in the office  
15 at that point?

16 A She had not.

17 Q Was Mr. Branstad in the Census Bureau  
18 briefing with you?

19 A I have no idea.

20 Q Did he -- tell me a little bit more about  
21 what you mean by he was the senior political in  
22 the Commerce Department at the time?

1           A     He was somebody who had worked on the  
2     campaign and the transition and had been brought  
3     over as part of that. And so he was one of  
4     the -- there's a small group of folks that had  
5     been -- you know, the new politicals that had come  
6     in, and he was one of them and was -- not only the  
7     senior person in the group.

8           Q     And did you generally keep him updated on  
9     anything that you would have been working with the  
10    Secretary on?

11          A     Most likely, yes.

12          Q     Do you recall whether he was present when  
13    the Secretary asked you the question that you were  
14    responding to?

15          A     I have no idea.

16          Q     Okay. Did he assist with the Secretary's  
17    confirmation?

18          A     No.

19          Q     Okay. Was anyone else on the transition  
20    team -- strike that.

21                 Did anyone else on the transition team  
22    assist you in your function as confirmation

1       Sherpa?

2           A     Yes, Israel Hernandez.

3           Q     Anyone else?

4           A     Nope.

5                 Well, I mean, we had a press person, as  
6       well.

7           Q     Who is the press person?

8           A     You're going to tax my memory here.  
9       Really nice fellow, but he didn't come over  
10      so -- unfortunately, I can't recall his name, but  
11      we'd be happy to provide it.

12          Q     Okay.

13          A     If you -- there's a -- there's a -- I  
14      think it's a Washington Post picture that has the  
15      group, and he's sitting there, but we'll get you  
16      the name.

17          Q     Thanks.

18                 Was Mr. Branstad working on Census Bureau  
19      issues in March of 2017?

20          A     Not that I recall, no.

21          Q     Did you discuss the census citizenship  
22      question with him outside of this email in

1 March of 2017?

2 A Again, not that I recall.

3 Q Let me direct you to the highlighted line  
4 about three-quarters of the way down on the page  
5 that is stamped 2521 -- and we apologize for the  
6 copy quality.

7 A I was going to say --

8 Q This is how the document --

9 A Think you highlighted it so nobody could  
10 read it.

11 Q -- was produced to us.

12 A So this is not a redaction is what you're  
13 telling me?

14 Q Correct. This is not a redaction.

15 A If you can tell me what it says, I'd be  
16 happy to --

17 Q Sure. The highlighted line says, "No  
18 major government survey, including the decennial  
19 census now underway, asks Americans about their  
20 citizenship status."

21 And you see that this blog post is dated  
22 May of 2010, correct?

1           A     Uh-huh.

2           Q     So the decennial census now underway, do  
3     you understand we refer to --

4           A     Would have been the 2010, yeah.

5           Q     Remember to please wait for me to finish  
6     my question before you answer.

7           A     Sure.

8           Q     Did you highlight this line?

9           A     Well, unless you did, then I'm assuming I  
10    did.

11          Q     I can represent to you we did not  
12    highlight this line.

13          A     Okay. Then I will assume that it was  
14    highlighted in the email.

15          Q     And why did you highlight this line of  
16    the blog post before sending it to the Secretary?

17          A     Well, it appears that the question was  
18    whether or not the citizenship question had been  
19    asked, at least on the 2010 census, and so I'm  
20    highlighting for him where in this article, so he  
21    doesn't have to read the whole thing that I found  
22    the information responsive to his question, which

1 is a statement by somebody in Wall Street Journal,  
2 which is, you know, in some circles considered a  
3 reasonably accurate paper. Stating that it was  
4 not collected in the 2010 census.

5 Q Okay. And take a look -- let's do that  
6 again. We had some interference from the  
7 conference line.

8 Take a look at the second page of  
9 Comstock Exhibit 2. This is the page marked 2522.

10 A Yep.

11 Q And, again, about two-thirds of the way  
12 down the page, there's another highlighted line.

13 Do you see that?

14 A I -- yep.

15 Q I'll represent to you this line was  
16 highlighted as the documents were produced to the  
17 plaintiffs in this lawsuits. We did not  
18 highlight.

19 A Okay.

20 Q That line reads --

21 A I can't read what it says.

22 Q -- "Many more foreign-born residents were

1 counted in 2000 than was expected based on annual  
2 estimates produced by the Bureau."

3 Do you see that line?

4 A Yep. I'm -- I see the highlighted line,  
5 but I'm taking it at your word that that's what it  
6 says.

7 Q Okay. The -- do you know why you  
8 highlighted that line when you sent this blog post  
9 to the Secretary?

10 A Again, it would appear to indicate that  
11 the census may have underestimated the number of  
12 undocumented folks.

13 Q Okay. So you told me that the Secretary  
14 first raised the idea of adding a citizenship  
15 question to the census shortly after he was  
16 confirmed. You've testified that on March 10th,  
17 you emailed him information showing that  
18 undocumented residents are included in the  
19 apportionment counts. You've testified on  
20 March 10th, you emailed him a blog post from the  
21 Wall Street Journal highlighting a line that no  
22 major government survey asks American's about

1     their citizenship status.

2             Does that help you remember when the  
3     Secretary first expressed interest in adding a  
4     citizenship question to the decennial census?

5             A     No.

6             Q     And does that help you remember that it  
7     was no later than March 10th that the Secretary  
8     first asked you that question?

9             A     Again, you're speculating as to when he  
10    asked. But he appeared to have inquired about  
11    some relevant aspects of it --

12            Q     Okay.

13            A     -- on March 10th.

14            Q     We'll mark this Comstock Exhibit 3. And,  
15    Mr. Comstock, is being handed Document Bates stamp  
16    3685.

17                   (Plaintiffs' Exhibit 3, Email, was  
18    marked.)

19    BY MR. COLANGELO:

20            Q     Mr. Comstock, do you have Exhibit 3 in  
21    front of you?

22            A     I do.

1           Q    And this is an email from David Langdon  
2   to you on March 10, 2017; is that right?

3           A    That's correct.

4           Q    Looks like this email was sent at  
5   7:50 p.m. on March 10th; is that right?

6           A    That appears to be correct, yes.

7           Q    And this was the same night you emailed  
8   the Secretary in response to, quote, your question  
9   on the census, unquote; is that right?

10          A    Yeah. Yes.

11          Q    Have you seen this email before?

12          A    I would assume, since it was sent to me.

13          Q    When's the last time you saw this email?

14          A    Probably at 7:51 p.m. on March 10th.

15          Q    Okay. Why did Mr. Langdon send you this  
16   email on the evening of March 10?

17               MR. GARDNER: Objection. Calls for  
18   speculation.

19   BY MR. COLANGELO:

20          Q    You can answer the question.

21          A    Well, again, as I mentioned earlier,  
22   there was -- we'd been told there was a

1 notification process that needs to go to Congress.  
2 And when you're not familiar with the details of  
3 this, one of the first things you do in my kind of  
4 position is try to get your arms around, okay,  
5 what are the things that have to happen?  
6 Particularly, what are the things that might  
7 prevent you from being able to make a policy  
8 change? And so when you're told we have to notify  
9 Congress about something at a certain time, that  
10 then becomes a deadline we have to decide if we  
11 need to take any action prior to. And in this  
12 case, there were a lot of other things potentially  
13 being added to the census that it was not clear  
14 that the administration was aligned with the prior  
15 administration on, including a question having to  
16 do with breaking out Middle Eastern North Africa  
17 [sic] people the so-called MENA question. There  
18 was the sexual orientation/gender identity  
19 questions. So there was an ongoing process to try  
20 to decide what, if anything, to do about these  
21 sort of pending things that were basically held  
22 over from the prior administration.

1 Q Okay. So --

2 A So I expect that's probably what Dave was  
3 emailing me about.

4 Q And was David in the conversation that  
5 you had with Secretary -- with Secretary Ross  
6 earlier that day about the census?

7 A I have no idea, because I don't recall  
8 the conversation.

9 Q And you don't recall telling him about  
10 that conversation?

11 A I don't, no.

12 Q Do you recall asking him to set up a  
13 briefing on that day?

14 A I -- it's entirely possible I did. I  
15 have no idea.

16 Q Okay. Do you think it's likely that it  
17 was a coincidence that on the same day you were  
18 emailing the Secretary about his question on  
19 whether noncitizens were included for  
20 apportionment purposes, that your employee was  
21 scheduling a briefing for you on the 2020 census  
22 topics?

1           A    I think there's not, necessarily, linkage  
2   between the two. As I mentioned before, there  
3   were other things happening with respect to the  
4   census. We were also trying to get our arms  
5   around the budget of the census, all of which  
6   would be entirely plausible reasons why we would  
7   schedule a briefing.

8           Q    And you mentioned one of the reasons you  
9   wanted, in general, to be briefed on Congressional  
10   notifications of the 2020 census topics was so  
11   that you had time to make policy decisions that  
12   the administration might support; is that right?

13          A    No. To make sure we were -- had time to  
14   make any changes that needed to be made, based on  
15   prior administration recommendations that we knew  
16   were still pending.

17          Q    Okay. And those prior recommendations  
18   were the sexual orientation and gender identity  
19   question and Middle Eastern North African issue;  
20   is that right?

21          A    Those were two that I recall, yes.

22          Q    Do you recall also being concerned at

1     this time about having enough time to add  
2     citizenship as a topic on the Congressional  
3     notification?

4           A     I don't recall that being a concern at  
5     the time.

6           Q     Let's have this marked as Comstock  
7     Exhibit 4.

8                     (Plaintiffs' Exhibit 4, Email, was  
9     marked.)

10    BY MR. COLANGELO:

11           Q     Handed the witness a document stamped  
12    3686. And we've marked this as --

13                     MR. COLANGELO: Is that Exhibit 4?

14    BY MR. COLANGELO:

15           Q     Do you have Exhibit 4 in front of you,  
16    Mr. Comstock?

17           A     I do.

18           Q     And this is an email from David Langdon  
19    to you, Ellen Herbst and Dennis Alvord, is that  
20    how you pronounce his name?

21           A     Yeah, Dennis Alvord.

22           Q     Dennis Alvord.

1 Dated March 15th; is that right?

2 A Yes.

3 Q Of 2017?

4 A Yeah. We did a lot late at night.

5 Q So it seems.

6 Have you seen this email before?

7 A Again, apparently, if it was to me, yes,  
8 I probably saw it sometime around the 15th of  
9 March, 2017.

10 Q Do you recall seeing this email since the  
11 15th of March, 2017?

12 A Absolutely not.

13 Q And this is an email from Mr. Langdon to  
14 you and Ms. Herbst that says, quote, I'd like to  
15 schedule a Census Bureau briefing on the 2020  
16 census and ACS topics before the Census Bureau  
17 does its Hill notifications on March 31st.

18 Do you see that?

19 A Yeah.

20 Q And then he goes on to say the goal is  
21 for all to be on the same page for the  
22 notification process for the topics this year and

1 questions next year.

2 Do you see that?

3 A Yeah.

4 Q So Mr. Langdon is trying to schedule a  
5 briefing before the Census Bureau notifications to  
6 the Hill, correct?

7 A Yes.

8 Q And was this in follow-up to the  
9 March 10th email we just discussed?

10 A Again, I have no recollection of this  
11 exchange, but it appears to be likely, yes.

12 Q Okay. Did the briefing that Mr. Langdon  
13 was trying to schedule for you take place?

14 A No idea.

15 Q Would that be reflected on your calendar  
16 if it did?

17 A It's possible.

18 Q The Census Bureau is not in the same  
19 building that you work in; is that right?

20 A That's correct.

21 Q Okay. In fact, are they in the  
22 District of Columbia or are they in Maryland?

1           A    I think they're actually just across the  
2 line in Maryland.

3           Q    Okay. And when you are briefed by  
4 Census Bureau officials, are you typically briefed  
5 in person or by telephone or in some other way?

6           A    Typically, they come over en masse and we  
7 have a briefing in the Secretary's conference  
8 room.

9           Q    Okay.

10          A    Or another conference room.

11          Q    Does the Secretary's conference room have  
12 its own calendar?

13          A    Good question. I don't know.

14          Q    In order to make sure that meetings  
15 aren't double booked?

16          A    I'm -- somebody may well maintain a  
17 calendar. I have no idea.

18          Q    But, typically, when you meet with  
19 Census Bureau officials, you meet with them in  
20 person, right?

21          A    Typically, yes.

22          Q    And they aren't in the same building as

1     you, they're coming from somewhere else, right?

2           A     Correct.

3           Q     They come over en masse. By that, do you  
4     mean there's more than one of them?

5           A     Typically, yes.

6           Q     How many people typically come over from  
7     the Census Bureau?

8           A     Well, a lot of the briefings have 15 or  
9     20 people in them.

10          Q     Okay. So would you typically invite 15  
11     or 20 people to come over en masse from Maryland  
12     to meet with you in person and not include it on  
13     your calendar?

14          A     I wouldn't have normally scheduled the  
15     meeting, so -- again, I would -- I might have it  
16     on my calendar if there's an invite, but I'm  
17     not -- I do a lot of meetings that I'm just pulled  
18     into, so I don't worry about putting them on a  
19     calendar.

20          Q     But if people are coming from outside the  
21     building to meet with you on an important issue,  
22     you'd want to make sure you were available, right?

1           A     Depends. I mean, if the Secretary's  
2     schedule interrupts that, then I'm not available,  
3     so --

4           Q     Okay. So you don't remember if this  
5     briefing happened?

6           A     I don't recall a particular briefing, no.

7           Q     Okay. When the Census Bureau comes over  
8     en masse to meet with you in person, do they  
9     typically bring or send you materials?

10          A     Sometimes they email things, yeah.

11          Q     Not always?

12          A     No. I mean, as you notice, Ellen, who is  
13     the deputy secretary, would be the person they'd  
14     be coming to brief. I would simply be an attendee  
15     at the meeting. So if I didn't show because  
16     something else conflicted on my schedule, then the  
17     meeting would occur any way, and that would be  
18     that.

19          Q     Okay. Take a look -- do you still have  
20     Exhibit 3 in front of you?

21          A     Yes.

22          Q     Okay. Let's go back to Exhibit 3. This

1 is David Langdon asking you what your schedule --

2 A Right.

3 Q -- looks like to receive a briefing on  
4 the 2020 census --

5 A Right.

6 Q -- and ACS topics; is that right?

7 A Correct.

8 Q So is it your understanding that he was  
9 briefing the acting deputy secretary or that he  
10 was arranging everything for you?

11 A Again, I have no recollection of this  
12 exchange. So it's entirely possible that this  
13 briefing in the 3/10 email and briefing in the  
14 3/15 email are one in the same or they could be  
15 different. I don't know.

16 Q Okay. Let's mark this Comstock 5. This  
17 is document Bates -- the witness has been handed  
18 Comstock Exhibit 5 stamped 1321.

19 (Plaintiffs' Exhibit 5, Memo, was  
20 marked.)

21 BY MR. COLANGELO:

22 Q Mr. Comstock, do you have Exhibit 5 in

1 front of you?

2 A I do.

3 Q Have you seen this document before?

4 A I have.

5 Q When's the first time you saw this  
6 document?

7 A Probably when we reviewed a draft in the  
8 Justice Department.

9 Q Okay. When was that?

10 A I couldn't tell you the date.

11 Q Was it near in time to the date below  
12 Secretary Ross's signature, which is June 21,  
13 2018?

14 A I'd say that's likely, yes.

15 Q When's the last time you saw this  
16 document?

17 A Right now.

18 Q When's the last time before right now  
19 that you saw this document?

20 A I think maybe yesterday. I can't recall.

21 Q Okay. Did you draft this memo?

22 A I did not draft this memo, no.

1 Q Did you assist in drafting this memo?

2 A I provided some edits to this memo.

3 Q Okay. Who else assisted in providing  
4 edits to the memo?

5 A The Office of General Counsel.

6 Q Who in the Office of General Counsel?

7 A I believe Mike Walsh.

8 Q Anyone else?

9 A There may have been other counsel. I  
10 don't know.

11 Q Did Peter Davidson provide edits to this  
12 memo?

13 A It's entirely possible he did.

14 Q Did James Uthmeier provide edits to this  
15 memo?

16 A It's possible, yes.

17 Q The second sentence of this memo says,  
18 "Soon after my appointment as Secretary of  
19 Commerce, I began considering various fundamental  
20 issues regarding the upcoming 2020 census,  
21 including funding and content. Part of these  
22 considerations included whether to reinstate a

1 citizenship question, which other senior  
2 administration officials had previously raised."

3 A Yes.

4 Q Do you see that?

5 A I do.

6 Q Do you recall when -- strike that.

7 Do you know what time period the  
8 Secretary is referring to in this memo when he  
9 says, "Soon after my appointment, I began  
10 considering various fundamental issues"?

11 A Well, it appears that he would be talking  
12 about spring of 2017.

13 Q And the Secretary says in this memo, "My  
14 staff and I thought reinstating a citizenship  
15 question could be warranted."

16 Do you see that line?

17 A Yep.

18 Q Okay. Who is the Secretary referring to  
19 when he says my staff and I?

20 A That probably includes me and could  
21 include other staff.

22 Q Which other staff?

1           A     Other staff involved in this process  
2     would include James Uthmeier, Mike Walsh,  
3     Wendy Teramoto, the Census staff. You know,  
4     again, the entire department that works for him,  
5     so --

6           Q     Okay. He refers in that line to, "My  
7     staff and I thought reinstating a citizenship  
8     question could be warranted."

9                     Is that right?

10          A     Right. So he's likely talking about me.  
11     And, again, whether he discussed this with  
12     Eric Branstad, I have no idea. Izzy Hernandez was  
13     working on this for a while, so he might have  
14     talked to him about it. And then, obviously,  
15     James Uthmeier was working on this. Ellen Herbst,  
16     whether he discussed it with her, I don't know.

17          Q     Let me ask you another question about  
18     your review of this memo. You mentioned that  
19     before today, the last time you saw it was  
20     yesterday; is that right?

21          A     Right. Counsel showed it to me.

22          Q     And who was present at that meeting?

1 A At the meeting yesterday?

2 Q Yes.

3 A Counsel sitting right here.

4 Q Can you identify them for the record,  
5 please?

6 A Josh, Kate, Mike Walsh, David.

7 Q Those four counsel?

8 A Yeah.

9 Q Okay. And when you saw this memo before  
10 June 21st, why were you shown this memo?

11 MR. GARDNER: Objection. Calls for  
12 speculation.

13 BY MR. COLANGELO:

14 Q You can answer.

15 A Well, I would be shown this memo because  
16 it involves an issue I worked on, so -- as one of  
17 the senior counsels for the Secretary, they would  
18 typically run something like this by me.

19 Q And did you meet to discuss it or were  
20 you shown the memo by email?

21 A Email. And I'm sure I discussed it with  
22 them, as well.

1           Q     And who did you discuss it with when you  
2     were shown this -- the draft of this memo before  
3     June 21st?

4           A     I would have discussed it with counsel.

5           Q     The same counsel you just identified?

6           A     No. Because I wasn't working with the  
7     Justice Department folks at the time. So this  
8     would have been internal at Commerce.

9           Q     Okay. I thought you said it came over  
10    from the Justice Department.

11          A     It did, the first draft.

12          Q     Okay. What do you mean by I wasn't  
13    working with Justice Department folks at the time?

14          A     I was not involved with direct  
15    interaction with the Justice Department --

16          Q     Okay.

17          A     -- I was seeing them through the Office  
18    of General Counsel.

19          Q     So you discussed with your colleagues in  
20    OGC?

21          A     Correct.

22          Q     The same colleagues who are here today?

1           A     Michael Walsh, I know I did. I don't  
2 recall if I discussed with David or not.

3           Q     Anyone else?

4           A     I likely talked to James Uthmeier.

5           Q     Anyone else outside --

6           A     Peter Davidson.

7           Q     I'm sorry. Please answer.

8           A     No. Peter Davidson. But those would  
9 have been the likely candidates. Again, I don't  
10 recall the exact discussions.

11          Q     This was two months ago, correct?

12          A     Correct.

13          Q     Did you discuss the draft of this memo  
14 with anybody outside the Office of the General  
15 Counsel at Commerce?

16          A     Other than when the Secretary signed it,  
17 no.

18          Q     Okay. Tell me who you discussed it with  
19 when the Secretary signed it?

20          A     The Secretary.

21          Q     And what did you discuss with him when he  
22 signed it?

1           A     Mr. Secretary, the Justice Department  
2     recommends that we file this supplemental memo,  
3     and so we recommend you sign it.

4           Q     And did he read it when you showed it to  
5     him?

6           A     I believe he did, yes.

7           Q     Had you shown it to him before that  
8     conversation?

9           A     I -- I don't know.

10          Q     Do you know if OGC had shown it to him  
11     before that conversation?

12          A     It's entirely possible, yes.

13          Q     Do you know if the Justice Department  
14     showed it to him before that conversation?

15          A     I don't believe the Justice Department  
16     came over to meet with them.

17          Q     Did you talk with anyone other than the  
18     Secretary or your colleagues from the Office of  
19     General Counsel about this memo before June 21st?

20          A     Not that I recall.

21          Q     Did you discuss with it  
22     Karen Dunn Kelley?

1 A That's entirely possible, yeah.

2 Q Okay. Anyone else?

3 A Again, don't recall specific meetings on  
4 this. I think it was done largely in back and  
5 forth as people were available.

6 Q Did you discuss it with Wendy Teramoto?

7 A No. I don't believe I discussed it with  
8 Wendy.

9 Q Wendy is the chief of staff?

10 A Yes.

11 Q And you report to her?

12 A Yes.

13 Q Do you know why you wouldn't have  
14 discussed it with Wendy?

15 A Wendy doesn't get very involved in the  
16 policy matters, typically.

17 Q Why not?

18 A Because she's chief of staff. That's her  
19 call.

20 Q Got it.

21 You mentioned that you were likely one of  
22 the people the Secretary's referring to when he

1 says my staff and I thought reinstating a  
2 citizenship question could be warranted.

3 A Uh-huh.

4 Q Why did you think in the spring of 2017  
5 that reinstating a citizenship question could be  
6 warranted?

7 A Because a citizenship question had  
8 previously been asked. It's asked by every other  
9 major democracy in the world, so why wouldn't we  
10 ask?

11 Q And why did you want a citizenship  
12 question?

13 A Again, I think it provides important  
14 information that's used for all kind of programs.  
15 And if you want a complete and accurate census,  
16 you would provide it.

17 Q What caused you to form a view on whether  
18 the citizenship question should or should not be  
19 added?

20 A When I was -- and I didn't really know  
21 that it wasn't included in the census, but once I  
22 became informed of that, it struck me as odd that

1 we don't ask the question.

2 Q And you testified earlier that the  
3 Secretary is the first person who raised it to  
4 you?

5 A In my employment at the Department of  
6 Commerce, yes.

7 Q Do you recall discussing it before you  
8 worked at the Commerce Department?

9 A Probably sometime in the last 30-odd  
10 years, I'm in -- you know, in political science  
11 and politics, so I'm sure I discussed at.

12 Q But the first time in 2017 that you  
13 recall considering this issue is when the  
14 Secretary raised it with you?

15 A Correct.

16 Q And this memo says the Secretary began  
17 considering it soon after his appointment?

18 A Correct.

19 Q And his appointment was February 28th  
20 we've established --

21 A That's correct.

22 Q -- of 2017?

1           A     Again, assuming that's the correct date,  
2     yes.

3           Q     I'm sure your counsel will advise us at  
4     the break if that's not the correct date.

5           A     I could look it up if you need me to.

6           Q     Okay. So you came to the view at some  
7     point in the spring of 2017 that a citizenship  
8     question ought to be included. What materials did  
9     you review in coming to that view?

10          A     The fact that it's not on the census.

11          Q     That's it?

12          A     That's sufficient, from my point of view,  
13     yes.

14          Q     You weren't concerned about any of  
15     the -- strike that.

16                 Are you aware that in developing surveys  
17     and statistical instruments, the Census Bureau and  
18     other statistical agencies consider the impact of  
19     asking a question on a range of factors, including  
20     response rates?

21          A     Absolutely. Yes.

22          Q     And were you concerned about the

1 Census Bureau's processes for changing statistical  
2 instruments when you formed a view that the  
3 citizenship question should be added?

4 MR. GARDNER: Objection. Form.

5 BY MR. COLANGELO:

6 Q You can answer.

7 A Okay. Well, again, I think you need to  
8 separate this out. My decision or my belief that  
9 a -- a citizenship question should be included  
10 does not in any way change the process by which it  
11 might get included. So they're two separate  
12 things. I can hold the belief that a certain  
13 action might be warranted or should be taken  
14 independent of any analysis of whether or not that  
15 should be done. That's two separate things. So I  
16 think you're conflating the two.

17 The fact that I may think that as an  
18 objective, hypothetical question should one be  
19 added, I can form that belief quite quickly and  
20 hold that. That's, then, separate from is that  
21 the right decision to make for a variety of  
22 reasons, including some of the issues that you

1 just outlined.

2 Q And so in forming your view that a  
3 citizenship question should be added --

4 A Again, you're characterizing it in a way  
5 that I'm not. In forming my view that a  
6 citizenship question would be appropriate to  
7 include in a census, that's one thing.

8 Q Okay.

9 A Should be added is a separate --

10 Q Hang on a second. I haven't added a  
11 question yet.

12 The Secretary's memo says my staff and I  
13 thought reinstating a citizenship question could  
14 be warranted, right? And you've testified that  
15 you were among the people he was referring to when  
16 he says my staff and I.

17 A Right.

18 Q So you were of the view that the  
19 citizenship -- adding a citizenship question could  
20 be warranted?

21 A Yes.

22 Q And I'm asking in forming the view that

1 adding a citizenship question could be warranted,  
2 you relied only on common sense; is that what you  
3 testified?

4 MR. GARDNER: Objection.

5 Mischaracterizes the witness's prior testimony.

6 BY MR. COLANGELO:

7 Q What did you rely on in forming that  
8 view?

9 A So, again, the key word is could. Could  
10 be warranted, meaning it is worthy of  
11 investigating further. That is what the document  
12 says.

13 Q What did you rely on in forming that  
14 view?

15 A The fact that other countries ask this  
16 information; the fact that we ask it on the ACS of  
17 a percentage of the population every year; the  
18 fact that as a citizen, most people wouldn't be  
19 concerned with answering that question. All of  
20 those things are relevant.

21 Q Did you research the statistical  
22 practices of other countries in the spring of

1 2017?

2 A No.

3 Q When did you -- did there come a time  
4 when you researched the statistical practices of  
5 other countries?

6 A Why would that be relevant?

7 Q Mr. Comstock, you just testified that in  
8 forming the view that adding a citizenship  
9 question could be warranted, among the things you  
10 considered was that other countries do. So I'm  
11 asking you --

12 A Okay.

13 Q -- did you research the practices of  
14 other countries?

15 A By that, you mean did I -- did I  
16 determine that other countries ask the question?  
17 Yes.

18 Q In the spring of 2017?

19 A Yeah. I think we did a quick Google  
20 search, you know.

21 Q So you Googled the census practices of  
22 other countries in order to determine that adding

1 a citizenship question could be warranted?

2 A Again, my formulation of a -- of a  
3 decision that it could be warranted is largely  
4 based on common sense.

5 Q Okay. I just want to make sure that I  
6 understand. That as to the part of your answer  
7 that related to the practices of other countries,  
8 in the spring of 2017, you formed that view by  
9 Googling it?

10 A I may have asked if other countries did  
11 it or I may have gotten online and looked. I  
12 don't recall.

13 Q Who would you have asked if you asked?

14 A I likely would have asked somebody from  
15 Census or I might have asked David Langdon.

16 Q And if you asked, would that be reflected  
17 in your -- in your email or your memo somewhere?

18 A If it was, you could have found the  
19 email. So I, obviously, did not send an email if  
20 I asked that question.

21 Q Okay. The --

22 MR. GARDNER: Matt, I'm sorry. I didn't

1 mean to break your line of questioning. Actually,  
2 we've been going about an hour and a half. Would  
3 now be an appropriate time for a break?

4 MR. COLANGELO: Yes.

5 MR. GARDNER: Let's take a break.

6 VIDEOGRAPHER: This concludes Media Unit  
7 Number 1. The time on the video is 10:32 a.m. We  
8 are now off the record.

9 (Off the record.)

10 VIDEOGRAPHER: This begins Media Unit  
11 Number 2. The time on the video is 10:45 a.m. We  
12 are on the record.

13 BY MR. COLANGELO:

14 Q Mr. Comstock, we were talking about the  
15 Secretary's June 21, 2018 memo which we marked as  
16 Exhibit 5. Do you still have that in front of  
17 you?

18 A I do.

19 Q Okay. That memo says that other senior  
20 administration officials had previously raised  
21 this question. Do you see that line?

22 A Yes.

1           Q     Who are those other senior administration  
2 officials?

3           A     You'd have to ask the Secretary.

4           Q     You don't know yourself?

5           A     I don't.

6           Q     You have no idea which other senior  
7 administration officials raised this question,  
8 other than the Secretary?

9           A     No.

10          Q     You never asked him where the idea came  
11 from?

12          A     Nope.

13          Q     He never told you where the idea came  
14 from?

15          A     Nope.

16          Q     You spent a lot of time on this issue?

17          A     Not relative to a lot of other things I  
18 work on, no.

19          Q     How would you characterize the amount of  
20 time you spent on this issue?

21          A     One one-hundredth of my time.

22          Q     You agree that it's an important issue?

1           A     Correct.

2           Q     It was important to the Secretary?

3           A     Correct.

4           Q     He was motivated to get this done?

5           A     He was working on a lot of different  
6 issues at the time.

7           Q     But this one was important to him?

8           A     Yes. Absolutely.

9           Q     Okay. And when you saw the draft of this  
10 memo before June 21st and it refers to other  
11 senior administration officials, you didn't  
12 yourself have any view or understanding of who  
13 those other administration officials were?

14          A     I did not, no.

15          Q     You didn't ask the secretary who those  
16 other administration officials were?

17          A     No.

18          Q     Okay. When recommending that he sign the  
19 memo, he didn't say to you who are the other  
20 senior -- who the other senior administration  
21 officials were?

22          A     We did not discuss that, no.

1           Q     And you said this came over from the  
2     Justice Department?

3           A     Correct.

4           Q     Who sent it over, do you remember?

5           A     I don't know.

6           Q     Let's mark Exhibit 6.

7                     (Plaintiffs' Exhibit 6, Email, was  
8     marked.)

9                     MR. COLANGELO: The witness has been  
10    handed document stamped 2561. This has been  
11    marked Exhibit 6.

12   BY MR. COLANGELO:

13           Q     Do you have Exhibit 6 in front of you?

14           A     I do.

15           Q     Have you seen this email before?

16           A     I'm not on the email, so, no.

17           Q     So this is the first time you've seen  
18    this message?

19           A     Yeah. I -- I don't recall seeing this  
20    when it was sent.

21           Q     Is today the first time you've seen this  
22    email?

1           A     I think so, yes.

2           Q     And you see this is an email from  
3 Brooke Alexander to Hillary Geary?

4           A     Yes.

5           Q     Who is Brooke Alexander?

6           A     She is the Secretary's confidential  
7 assistant -- or at the time, she was. She's no  
8 longer.

9           Q     And do you understand the recipient of  
10 this email to be the Secretary's wife?

11          A     That appears to be who it's directed to,  
12 yes.

13          Q     And this email is dated March 5th of  
14 2017, correct -- I'm sorry. Strike that.

15                This email is dated April 5th of 2017; is  
16 that correct?

17          A     That's what's on there, yes.

18          Q     And you see that Ms. Alexander is  
19 emailing Ms. Ross and says, quote, do you have  
20 plans following Newseum? I'm asking because  
21 Steven Bannon has asked that the Secretary talk to  
22 someone about the census, and around 7:00 to

1 7:30 p.m. is the available time.

2 Do you see that?

3 A Yeah.

4 Q Okay. You know who Steven Bannon is?

5 A I do.

6 Q Who is Steve Bannon?

7 A He was an advisor to the President.

8 Q And he had that position at the time of  
9 this email, correct?

10 A I do not know.

11 Q And who did Mr. Bannon want the Secretary  
12 to talk to?

13 MR. GARDNER: Objection. Calls for  
14 speculation. Lack of foundation.

15 THE WITNESS: I have no idea.

16 BY MR. COLANGELO:

17 Q Do you understand that the  
18 second -- that -- strike that.

19 Do you understand that Mr. Bannon wanted  
20 the Secretary to talk to Kris Kobach?

21 A I wasn't part of this email or this  
22 conversation, so I don't know who he wanted him to

1 talk to.

2 Q Did the Secretary speak with Mr. Bannon  
3 that night?

4 A I don't know.

5 MR. GARDNER: Objection. Calls for  
6 speculation. Lack of foundation.

7 THE WITNESS: I do not know.

8 BY MR. COLANGELO:

9 Q Did the Secretary speak with Kris Kobach  
10 on April 7, 2017?

11 A No idea.

12 Q Did you join a call with the Secretary  
13 regarding the census on April 5th of 2017?

14 A I have no idea.

15 Q You don't know if you joined the call  
16 with the Secretary on April 5th of 2017?

17 A I don't know what I was doing on  
18 April 5, 2017 without looking at a calendar or  
19 something else that would remind me. I'd have to  
20 go through my emails that day. I could not tell  
21 you what I was doing on that day.

22 Q Do you know who Kris Kobach is?

1           A     I believe he's somebody with State of  
2     Kansas maybe.

3           Q     And have you spoken to Mr. Kobach before?

4           A     I've never spoken to Mr. Kobach.

5           Q     Have you emailed with Mr. Kobach?

6           A     I've never emailed with Mr. Kobach.

7           Q     And after the call that's referred to in  
8     this email, did the Secretary tell you what he  
9     discussed?

10          A     No.

11               MR. GARDNER:  Objection.  Lack of  
12     foundation.

13               THE WITNESS:  No.

14     BY MR. COLANGELO:

15          Q     Who would know what was discussed on this  
16     phone call?

17               MR. GARDNER:  Objection.  Calls for  
18     speculation.  Also, lack of foundation.

19     BY MR. COLANGELO:

20          Q     You can answer.

21          A     The parties to the call.

22          Q     You were working on the census in the

1 spring of 2017, correct?

2 A Yes.

3 Q And the Secretary frequently asked you  
4 for updates on the census-related matters in the  
5 spring of 2017, right?

6 A I wouldn't characterize it as frequently.

7 Q Did the Secretary ever ask you for  
8 updates on census matters in the spring of 2017?

9 A Yes, he did.

10 Q Did he ever update you on developments  
11 that he was aware of regarding the census in the  
12 spring of 2017?

13 A It's unusual for the Secretary to update  
14 me on anything.

15 Q Would the Secretary have told you if he  
16 had a conversation with Steven Bannon about the  
17 census?

18 A Not necessarily.

19 Q Would he have told you if he had a  
20 conversation about the census with Kris Kobach?

21 A Not necessarily.

22 Q Why not?

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: I wouldn't speculate, but  
3 he's the Secretary. He makes his own decisions.

4 BY MR. COLANGELO:

5 Q So has the Secretary ever told you about  
6 a conversation he had with someone else?

7 MR. GARDNER: Objection. Form.

8 THE WITNESS: Yes. He reports to me  
9 sometimes if he feels that it's essential that I  
10 know the substance of conversation.

11 BY MR. COLANGELO:

12 Q Okay.

13 MR. COLANGELO: Can we mark this  
14 Exhibit 7?

15 (Plaintiffs' Exhibit 7, Email, was  
16 marked.)

17 THE WITNESS: Thank you very much.

18 BY MR. COLANGELO:

19 Q Handed the witness a document stamped 763  
20 and marked Exhibit 7.

21 Mr. Comstock, do you have Exhibit 7 in  
22 front of you?

1 A I do.

2 Q Have you seen this email before?

3 A No, I haven't.

4 Q This is the first you've ever seen this  
5 email?

6 A Yes.

7 Q Okay. If you turn to the second page --

8 A I'm sorry. I'm just reading the  
9 document.

10 Okay.

11 Q Do you see at the bottom of page -- of  
12 the first page of this exhibit, Mr. Comstock,  
13 there's an email from Kris Kobach to  
14 Wendy Teramoto --

15 A Right.

16 Q -- on July 21, 2017; is that right?

17 A That's what it says.

18 Q And the email says, "Wendy, nice meeting  
19 you on the phone this afternoon. Below is the  
20 email that I sent to Secretary Ross. He and I had  
21 spoken briefly on the phone about this issue at  
22 the direction of Steven Bannon a few months

1 earlier."

2 Do you see that?

3 A I see that.

4 Q Okay. That was the call on April 5th  
5 that we were just talking about, right?

6 MR. GARDNER: Objection. Lack of  
7 foundation. Calls for speculation.

8 THE WITNESS: Doesn't specify when the  
9 phone call took place.

10 BY MR. COLANGELO:

11 Q And did Wendy tell you she got this email  
12 from Kris Kobach in July of 2017?

13 A No.

14 Q You've never spoken to Wendy about  
15 Kris Kobach, at all?

16 A Not that I recall.

17 Q Is there anyone else that you're aware of  
18 that Steven Bannon directed the Secretary to talk  
19 to about the census, other than Kris Kobach?

20 MR. GARDNER: Objection. Lack of  
21 foundation.

22 THE WITNESS: I have no knowledge of any

1 conversations with Steven Bannon, so I wouldn't  
2 know who he might have suggested the Secretary  
3 talk to.

4 BY MR. COLANGELO:

5 Q Have you ever spoken to Steven Bannon  
6 yourself?

7 A I have never spoken to Steven Bannon  
8 myself.

9 MR. COLANGELO: Can we have this marked  
10 Exhibit 8?

11 (Plaintiffs' Exhibit 8, Email, was  
12 marked.)

13 BY MR. COLANGELO:

14 Q This is document stamped 3709.

15 A Uh-huh.

16 Q Do you have Exhibit 8 in front of you?

17 A Uh-huh.

18 Q Who's Mark Neuman?

19 A Mark Neuman is a former -- I think he was  
20 formally chair of a census advisory committee, and  
21 he was a member of the transition -- I don't know  
22 which aspect of transition but, basically,

1     advising on census.

2           Q     How long have you known Mark Neuman?

3           A     I think I met Mark Neuman probably in  
4     December or January of either December 2016 or  
5     January 2017. I don't recall which.

6           Q     And did you meet him in your capacity as  
7     the confirmation Sherpa?

8           A     Yes.

9           Q     Did you discuss any Commerce Department  
10    policy matters with him during the transition?

11          A     Not that I recall.

12          Q     Did you discuss any Census Bureau policy  
13    matters with him during the transition?

14          A     We discussed -- I mean, he basically  
15    briefed the Secretary on the Census operation,  
16    some of the challenges they face, the whole issue  
17    of hard-to-count populations, the challenges you  
18    face hiring temporary workers, concerns about the  
19    budget, whether they're properly funded. Those  
20    were the primary discussion points.

21          Q     Where does Mr. Newman work right now?

22          A     He is a senior VP at -- I don't know the

1 name of the organization, but I know they own  
2 Victoria's Secret.

3 Q He's not a government employee right now?

4 A No.

5 Q Okay. How often do you speak with him?

6 A I last saw him several months ago when we  
7 ran into each other at a party.

8 Q And over the course of your time at the  
9 Commerce Department, how often have you spoken  
10 with him?

11 A Maybe a dozen times.

12 Q By telephone?

13 A Yep.

14 Q Have you ever met with him in person?

15 A I have met with him in person.

16 Q How many times?

17 A I think he briefed the Secretary maybe  
18 two times, three times that I can recall, and he  
19 had me over for dinner one time at his house to  
20 meet a potential chief of staff of the  
21 Census Bureau.

22 Q What did he brief the Secretary on?

1           A     Again, the whole operation of the Census,  
2     background on it. It's an area I was not familiar  
3     with, and he was one of the folks on the  
4     transition who was familiar with the Census.

5           Q     Have you been present for briefings he  
6     gave the Secretary on the citizenship question?

7           A     I've been present -- did we cover  
8     citizenship? He covered citizenship at one of the  
9     briefings.

10          Q     When was that?

11          A     I couldn't tell you the date.

12          Q     What did he say about citizenship in the  
13     briefing that you attended with him?

14          A     We talked about how citizenship could  
15     be -- what would it be useful for and in terms of  
16     a government agency. So the Voting Rights Act  
17     enforcement, that's what the ACS data has provided  
18     to the Justice Department.

19          Q     When was that briefing?

20          A     Again, sometime -- sometime in the  
21     spring. I can't -- couldn't tell you exactly  
22     when.

1 Q Is Mr. Neuman a lawyer?

2 A Good question. I don't know.

3 Q Does Mr. Neuman have a voting rights  
4 background?

5 A I couldn't tell you.

6 Q Take a look at Exhibit 8, which is an  
7 email from you to Mr. Neuman at the bottom of the  
8 page dated April 13, 2017. Do you see that?

9 A Uh-huh.

10 Q And the email says, "Hi, Mark. Quick  
11 question. When does Census need to notify  
12 Congress regarding the questions that will be on,  
13 A, the ACS and, B, the decennial census?"

14 A Correct.

15 Q Why were you asking Mark this question?

16 A Likely because Mark would know the  
17 answer.

18 Q Why didn't you ask the Office of General  
19 Counsel?

20 A Because at the time, there was nobody in  
21 the Office of General Counsel that I  
22 would -- would have been familiar with.

1           Q    I'm not sure I understand what you mean  
2   by nobody in the Office of General Counsel that  
3   you would have been familiar with.

4           A    Well, there was nobody in the Office of  
5   General Counsel that I was -- had easy access to  
6   that works on census issues.

7           Q    You're the director of the office policy  
8   in the Office of the Secretary?

9           A    Correct.

10          Q    Okay. But you didn't think you could ask  
11   the General Counsel's office this question at the  
12   time?

13          A    Well, if you note the date, the time of  
14   this email, it's 9:58 p.m.

15          Q    Uh-huh.

16          A    I'm trying to get an answer. And I'm  
17   pretty certain there's going to be nobody in the  
18   Office of General Counsel at 9:58 p.m.

19          Q    Did you need an answer that night?

20          A    I usually try to get answers as quickly  
21   as I can, yes.

22          Q    Why were you asking this question?

1           A     Probably because it was on my list of  
2 things to do, and I was working, trying to get  
3 those things done.

4           Q     And how did it come to be on your list of  
5 things to do?

6           A     Well, I may have been -- again, the  
7 Secretary might have asked me about when do we  
8 need to get questions, when do we need to notify  
9 the Congress?

10          Q     Okay. So you asked Mr. Neuman this  
11 question in order to respond to a question from  
12 the Secretary?

13          A     I don't know the genesis because I didn't  
14 say in the email why I need the information.

15          Q     Why didn't you ask the Census Bureau this  
16 question?

17          A     Because in April, I probably had no  
18 contracts over at the Census Bureau.

19          Q     By April 13th of 2017, had you already  
20 discussed the citizenship question with  
21 Mr. Neuman?

22          A     I have no idea.

1           Q    Take a look at Mr. Neuman's reply to your  
2   email.   This is at the top of Exhibit 8.   He says,  
3   "I believe that the annual notification to the  
4   Congressional committee relating to the  
5   questionnaire content additions for 2020 census  
6   just take place."

7                   And then do you see in the second  
8   paragraph he says, "There will be another  
9   opportunity next year"?

10          A    Right.

11          Q    What does Mr. Neuman mean by opportunity?

12                   MR. GARDNER:   Objection.   Calls for  
13   speculation.

14                   THE WITNESS:   Again, if you notice the  
15   rest of his statement that you didn't read, plenty  
16   of questions relating to sexual orientation.   So  
17   we were focused on the issue of what was going to  
18   be included in the questions.   More precisely,  
19   what was not going to be added.

20                   The prior administration had wanted to  
21   add, I might note, to the decennial census a  
22   question on sexual orientation and gender

1 identity. So for all the people that are raising  
2 an uproar right now about the addition of this  
3 question, apparently there was no concern about  
4 adding such a question on another sensitive topic  
5 last year.

6 So leaving that aside, I think he is  
7 simply pointing out to the extent there's -- we  
8 have some questions we'd like to see added, there  
9 will be an opportunity next year.

10 BY MR. COLANGELO:

11 Q So had you talked to Mr. Neuman about a  
12 question you'd like to see added?

13 A I don't recall.

14 Q Okay. But the sexual orientation and  
15 gender identity question was not included as a  
16 topic, right?

17 A Correct.

18 Q And that was because you came to the  
19 policy position you did not want to ask that  
20 question, correct?

21 A That was the administration's conclusion,  
22 yes.

1           Q     So Mr. Neuman can't have been talking  
2     about the opportunity to put that question back on  
3     that you had just decided not to have included,  
4     right?

5           A     That would be speculation. I don't know  
6     what he's referring to.

7           Q     Okay. But you did testify he was  
8     referring to the opportunity to put a question on?

9           A     He was noting that there would be another  
10    opportunity to place a question, should somebody  
11    decide to do that next year.

12          Q     And then the next paragraph of his email  
13    says, "I recommend that you ask the Bureau to  
14    provide a list of their response rates on all  
15    demographic questions currently asked on the ACS.  
16    You will see whether certain demographic questions  
17    have lower response rates than others, especially  
18    among certain demographic groups. That is  
19    something that can be provided off the shelf."

20          A     Yes.

21          Q     Why is he recommending that you ask that  
22    information from the Bureau?

1           MR. GARDNER: Objection. Calls for  
2 speculation.

3           THE WITNESS: Again, to the extent we  
4 were discussing the possibility of adding the  
5 citizenship question, that would be a logical  
6 question to ask.

7 BY MR. COLANGELO:

8           Q When did you first discuss the  
9 possibility of adding a citizenship question with  
10 Mr. Newman?

11          A Again, for the umpteenth time, I don't  
12 recall the exact date.

13          Q But you agree that based on this email  
14 exchange, that you had already had that  
15 conversation before April 14th of 2017?

16          A Again, I have -- I don't recall when we  
17 first discussed it. It's entirely possible.

18          Q Not just possible, but likely, right?  
19 Why else would Mr. Newman be talking about the  
20 opportunity to add a question?

21           MR. GARDNER: Objection. Calls for  
22 speculation.

1 THE WITNESS: Again, if we were  
2 considering changing the questions, it would be  
3 important to know.

4 BY MR. COLANGELO:

5 Q And if you're considering adding a  
6 citizenship question, it would also be important  
7 to know the response rates on all demographic  
8 questions; is that right?

9 A That would be one of the questions you  
10 would ask, yes.

11 Q Okay. Did the Secretary discuss the  
12 citizenship question with Mr. Newman in the spring  
13 of 2017?

14 A You'd have to ask the Secretary.

15 MR. GARDNER: Objection. Lack of  
16 foundation.

17 BY MR. COLANGELO:

18 Q I'm sorry. You were both speaking at the  
19 same time.

20 MR. GARDNER: Objection. Lack of  
21 foundation.

22 BY MR. COLANGELO:

1 Q And now please answer.

2 A I would say you'd have to ask the  
3 Secretary.

4 Q Did he ever tell you that he spoke with  
5 Mr. Newman about the citizenship question?

6 A I'm fairly certain he was -- he did talk  
7 to him at some point.

8 Q Okay. When was that?

9 A I couldn't tell you.

10 Q Did Mr. Newman ever say to you that he  
11 had spoken to the Secretary about adding a  
12 citizenship question?

13 A It's possible, yeah.

14 Q Okay. When did he tell you?

15 A Again, I don't recall the exact date.

16 Q Try to place it, roughly.

17 A To your question, was there discussion of  
18 the possibility of adding a citizenship question  
19 in the spring? Yes. That does not mean any firm  
20 decision had been made. We were exploring the  
21 opportunity.

22 Q I'm not asking you about decisions. I'm

1 just asking when the Secretary spoke to  
2 Mr. Newman.

3 A Again, I keep telling you I don't know  
4 the exact dates he spoke to him.

5 Q Okay.

6 A I know he did speak to Mr. Newman. I  
7 don't know the exact dates.

8 Q And I'm not sure I got an answer, but  
9 forgive me if I did.

10 When did Mr. Newman tell you that he had  
11 spoken to the Secretary about this citizenship  
12 question?

13 A Again, I do not recall the exact dates of  
14 conversations.

15 Q Okay.

16 A If you don't have an email that specifies  
17 it, I can't tell you the date.

18 Q All right. Did you ask the Census Bureau  
19 to give you the information that Mr. Newman  
20 suggested in this email?

21 A Possibly. I don't recall.

22 In the decision memo we have such

1 information, so, clearly, at some point, it was  
2 asked. I cannot tell you.

3 Q Can you tell me what you mean by decision  
4 memo?

5 A The memo that the Secretary produced  
6 documenting his decision. There was a reference  
7 to other response rates and demographic. So,  
8 clearly, at some point, the information became  
9 available.

10 Q And you're referring to the  
11 March 26, 2018 from the Secretary to Karen  
12 Dunn Kelley?

13 A Yes.

14 Q But you don't recall seeing that  
15 information -- strike that.

16 MR. COLANGELO: Let's mark Exhibit 9.

17 (Plaintiffs' Exhibit 9, Email, was  
18 marked.)

19 BY MR. COLANGELO:

20 Q We have marked a document stamped 3694 as  
21 Exhibit 9. Do you have this email in front of  
22 you?

1 A I do.

2 Q Have you seen this email before?

3 A Yes.

4 Q Before today, when is the last time you  
5 saw this email?

6 A Yesterday.

7 Q And this is an email from  
8 Brooke Alexander to you with a copy to  
9 Wendy Teramoto; is that right?

10 A Correct.

11 Q Dated April 20, 2017?

12 A Yep.

13 Q And did you understand this to be a  
14 message from the Secretary?

15 A That's what Brooke's message says.

16 Q Brooke has access to the Secretary's  
17 email?

18 A Yes.

19 Q And is it -- okay. Withdrawn.

20 Are you familiar with the National  
21 Advisory Committee on Racial, Ethnic and Other  
22 Populations?

1           A     No.

2           Q     You have no idea what the National  
3     Advisory Committee is?

4           A     I mean, I know it's an advisory committee  
5     to Census, but outside of that, I -- I couldn't  
6     tell you what they do, other than what their title  
7     suggests that they do.

8           Q     So you're aware that there's a National  
9     Advisory Committee on Racial, Ethnic and Other  
10    Populations that advises the Census Bureau?

11          A     I take that from this email that's  
12    correct, yes.

13          Q     And what do you understand the role of  
14    the advisory committee to be?

15          A     To provide advice to the Census Bureau.

16          Q     Okay. The message from Brooke speaking  
17    for the Secretary to you says, "Earl, Census  
18    director has on April 29th a meeting of the  
19    National Advisory Committee. We must get our  
20    issue resolved before this" -- exclamation point,  
21    and the must is underlined.

22                Do you see that?

1 A I see that.

2 Q What is our issue?

3 A I couldn't tell you.

4 Q Our issue is the citizenship question,  
5 right?

6 MR. GARDNER: Objection. Calls for  
7 speculation. Lack of foundation.

8 THE WITNESS: I would say likely not,  
9 actually, given there's no reason to believe the  
10 National Advisory Committee on Racial, Ethnic and  
11 Other Populations would be advising on a  
12 citizenship question.

13 BY MR. COLANGELO:

14 Q Were there other issues that you'd been  
15 talking about with the Secretary involving the  
16 census in the spring of 2017 that would relate to  
17 the National Advisory's mandate?

18 A Certainly the SOGI question would, and  
19 the MENA question would.

20 Q But the notification date for the SOGI  
21 question was at the end of March in 2017 -- for  
22 the SOGI topics, I should say, correct?

1           A     Correct.

2           Q     So that was already resolved by April,  
3     right?

4           A     I'm not certain of the timing, but MENA,  
5     I think, was not resolved until sometime in the  
6     spring or summer.

7           Q     And sticking with the SOGI question --  
8     and for the record, that' S-O-G-I. SOGI stands  
9     for sex orientation and gender identity.

10          A     Correct.

11          Q     Would you conclude if the Secretary  
12     referred to a National Advisory Committee on  
13     Racial and Ethnic, Populations that the SOGI  
14     question would be what he had in mind?

15          A     I would guess. Again, this is  
16     speculation, but my best guess, based on this  
17     reference, is probably more like the MENA issue is  
18     what was in front of us.

19          Q     Okay. And describe the MENA issue?

20          A     The Middle Eastern North African  
21     question. There's a question as to whether you  
22     ask two questions or you ask one question. And

1 it's not a topic I spent a tremendous amount of  
2 time on, but it was something that the Census was  
3 very much discussing at the time.

4 Q And had you discussed that issue with the  
5 Secretary?

6 A We had a conversation or two about it.  
7 And, again, it was largely in the context of which  
8 way to go on that question.

9 Q And why would the Secretary have said  
10 that that issue must be resolved by April 29th?

11 MR. GARDNER: Objection. Calls for  
12 speculation. Lack of foundation.

13 BY MR. COLANGELO:

14 Q You can answer.

15 A You know, again, at that point -- this is  
16 shortly before a -- if I recall correctly, a  
17 Congressional hearing that was going to go into  
18 the census and probably wanted to have a position  
19 to recommend to Director Thompson as to what he  
20 should say to the advisory group. Again, I don't  
21 recall this reference or precisely what he was  
22 speaking to.

1           Q    Okay.  This isn't a topic you'd spent a  
2   lot of time on, right, the Middle Eastern  
3   North African question?

4           A    Correct.

5           Q    There's no reason the Secretary would  
6   have referred to it as our issue, is there?

7                   MR. GARDNER:  Objection.  Calls for  
8   speculation.  Lack of foundation.

9                   THE WITNESS:  Again, depending on if his  
10   perception was that there was an administration  
11   policy call to make on it, he would refer to it as  
12   our issue.

13   BY MR. COLANGELO:

14           Q    He could also have referred to the  
15   citizenship issue as your issue, right?

16                   MR. GARDNER:  Objection.  Calls for  
17   speculation.  Lack of foundation.

18                   THE WITNESS:  Again, I would say looking  
19   at the context of the email, I would say that's an  
20   unlikely connection.

21   BY MR. COLANGELO:

22           Q    And by April 20th of 2017, how many times

1 had you discussed the citizenship question with  
2 Secretary Ross?

3 A I have no idea.

4 Q More than a handful?

5 A Possibly.

6 Q Okay. Would you say he was extremely  
7 interested in the issue?

8 A Certainly, when he raised it, he was  
9 interested in it.

10 Q Okay. You wouldn't say he was extremely  
11 interested in the MENA question, right?

12 A When we discussed it, he was equally  
13 interested in that.

14 Q He didn't raise it with you with the same  
15 frequency he raised the citizenship question,  
16 right?

17 A That's correct.

18 Q Why was Wendy Teramoto copied on this  
19 email?

20 MR. GARDNER: Objection. Calls for  
21 speculation.

22 THE WITNESS: Couldn't tell you.

1 BY MR. COLANGELO:

2 Q Did you speak with her about this issue  
3 after you got this message?

4 A It's possible. I don't recall.

5 MR. COLANGELO: Can we mark this  
6 Exhibit 10?

7 (Plaintiffs' Exhibit 10, Email, was  
8 marked.)

9 BY MR. COLANGELO:

10 Q Handed the witness a document stamped  
11 3710 and we've marked it as Exhibit 10.

12 A Okay.

13 Q Have you read this email?

14 A Yep.

15 Q Okay. You've seen this email before?

16 A I have.

17 Q When's the last time you saw this email?

18 A Yesterday.

19 Q When you saw this email yesterday, was it  
20 redacted as it is in the form I've shown it to you  
21 now or was it unredacted?

22 A It was redacted.

1           Q     Okay. And you see that the Secretary has  
2     written you an email on May 2, 2017 that says,  
3     quote, worst of all, they emphasize they have  
4     settled with Congress on the questions to be  
5     asked. I am mystified why nothing has been done  
6     in response to my months' old request that we  
7     include the citizenship question. Why not?

8                     Do you see that?

9           A     I see that.

10          Q     When did the Secretary make his months'  
11     old request to include the citizenship question?

12          A     Again, sometime in the spring.

13          Q     Probably on March 10th when you emailed  
14     him the Wall Street Journal blog post?

15          A     Potentially. I don't recall.

16          Q     Who does the "they" refer to in the line  
17     I just read you from the Secretary's email?

18                     MR. GARDNER: Objection. Calls for  
19     speculation.

20                     THE WITNESS: I don't know.

21     BY MR. COLANGELO:

22          Q     You mentioned a minute ago the Census

1 director in the -- this time period, had an  
2 upcoming House appropriation hearing; is that  
3 right?

4 A I believe I said the Secretary had an  
5 upcoming House appropriation hearing.

6 Q Do you remember the date of that hearing?

7 A I don't.

8 MR. COLANGELO: Can we mark this Exhibit  
9 Number 11?

10 (Plaintiffs' Exhibit 11, Email, was  
11 marked.)

12 BY MR. COLANGELO:

13 Q Okay. This is -- have you had a chance  
14 to look at this email?

15 A Lot of black spots on it. Okay.

16 Q Have you seen this email before?

17 A Apparently I must have seen it when I  
18 wrote it.

19 Q When's the last time before today you saw  
20 this email?

21 A Probably May 1, 2017.

22 Q Okay. And does this email reflect that

1     you sent the Secretary, Director Thompson's House  
2     appropriation subcommittee written testimony?

3           A     Yes.

4           Q     And his testimony was for, quote, this  
5     Wednesday?

6           A     Right. That's what it appears.

7           Q     And if I told you that -- oh, if you look  
8     at the subject line it says, Wednesday, May 3rd;  
9     is that right?

10          A     That's correct.

11          Q     Okay. So let's refer back to Exhibit 10.

12          A     Yep.

13          Q     Now that you see the day before you had  
14     sent the Secretary Mr. Thompson's written  
15     testimony for the House appropriation subcommittee  
16     hearing --

17          A     Right.

18          Q     -- what do you understand, worst of all  
19     they emphasize they have settled with Congress to  
20     mean?

21               MR. GARDNER: Same objection. Calls for  
22     speculation.

1           THE WITNESS: Again, I'm not sure without  
2 further context who they is. He could be  
3 referring to that advisory committee that you had  
4 had in a previous email. He could be referring to  
5 Census.

6 BY MR. COLANGELO:

7           Q Does the advisory committee establish the  
8 content for the census?

9           A Again, the context of this email is that  
10 somebody appears to be emphasizing that they've  
11 settled with Congress on the questions. That  
12 clearly is not the case, because questions aren't  
13 due until March of 2018. So they couldn't have  
14 settled on the questions.

15          Q And you see that at the top of  
16 Exhibit 10, you email the Secretary saying, "On  
17 the citizenship question, we will get that in  
18 place"?

19          A Uh-huh.

20          Q Do you see that?

21          A Yep.

22          Q What did you mean by that?

1           A     Well, it means that we're, as instructed,  
2     going to continue to work on developing a  
3     citizenship question, and that process -- again,  
4     it's probably helpful at this point to explain on  
5     the policy side, right, you formulate -- you  
6     formulate something that you think you would like  
7     to do, and then you go explore that. That's my  
8     job, is to go. Secretary says, I think this might  
9     be a good idea, you run it down, and you track  
10    down the issues, and you say -- you know, first  
11    question I usually ask is, okay, is this something  
12    that Department of Commerce does? Do we have  
13    legal authority to do this? Once you clear those  
14    two thresholds, now you get to work.

15                But I don't spend a lot of time chasing  
16    down things that people are not planning on doing.

17           Q     So you --

18           A     So there has to be some initial threshold  
19    decision that this is worth pursuing.

20           Q     Now, let me stop you there, because you  
21    said a minute ago, as instructed. And you're  
22    referring to instructions from the Secretary,

1 correct?

2 A To pursue, exploring the question.

3 Q This was instructions to add the question  
4 in response to my months' old request that we  
5 include the citizenship question, correct?

6 A This would be instructions to review and  
7 consider and present to him information that would  
8 allow him to make a decision on whether or not to  
9 take final action.

10 Q Mr. Comstock, I'm just asking you what  
11 you understood on May 2nd --

12 A And that's what I'm telling you I  
13 understood on May 2nd.

14 Q Hold on one second. Let me finish the  
15 question.

16 A Uh-huh.

17 Q The Secretary wrote, "I am mystified why  
18 nothing has been done in response to my months'  
19 old request that we include the citizenship  
20 question."

21 And you responded, "On the citizenship  
22 question, we will get that in place"?

1           A     Correct.

2           Q     Okay. So my question is: By we will get  
3 that in place, what did you mean?

4           A     I meant that I will present to you the  
5 information and the process necessary for you to  
6 decide if you would like to pursue this question.

7           Q     Your email says we will get that in  
8 place, correct?

9           A     I mean, we will get in front of you the  
10 necessary information for you to make a decision.  
11 Part of my role in this process is explaining to  
12 people who have never worked in government before  
13 that there are processes that you have to follow  
14 in order to make an action happen. You're dealing  
15 with people who are used to being able to make a  
16 decision and it simply goes into effect.

17          Q     Okay.

18          A     That's not the way the U.S. government  
19 works.

20          Q     So the process that you then go on to  
21 tell the Secretary he has to follow is later in  
22 your message; is that right?

1           A     That part of the process, yes.

2           Q     And that email says we need to work with  
3     Justice to get them to request that citizenship be  
4     added back as a census question; is that right?

5           A     That's right.

6           Q     Why would you say you needed to work with  
7     the Justice Department to get them to request that  
8     citizenship be added back?

9           A     Because based on a very preliminary  
10    review, they appeared to be the most likely  
11    government body that would have a specific need  
12    for the information that would support adding a  
13    citizenship question to the decennial census.

14          Q     Who conducted that preliminary review?

15          A     We were told by the Census Bureau that  
16    the Justice Department was the person that had  
17    requested the citizenship question on the ACS and  
18    that they utilized the ACS data for Voting Rights  
19    Act information.

20          Q     Who in the Census Bureau told you that?

21          A     I couldn't tell you.

22          Q     And why did you need a request from

1 Justice?

2 A Again, based on the preliminary review,  
3 the understanding we had was questions are added,  
4 based on requests from a government agency. There  
5 is such a thing as the Paperwork Reduction Act  
6 where you have to justify to OMB why do I need  
7 this information? That has to get cleared. So  
8 there are certain hurdles you have to get through.  
9 So if at the end of the day the Secretary decided  
10 to pursue this question, we would need to clear  
11 certain legal thresholds.

12 Q Why not just tell the Census Bureau to  
13 add the citizenship question and say the Secretary  
14 wanted it?

15 A Because I'm not sure that that would be  
16 the process they would necessarily agree to  
17 follow.

18 Q So you had to have it come from DOJ in  
19 order for the Census Bureau to agree to follow it?

20 A Again, that was a preliminary conclusion  
21 based on a cursory analysis.

22 Q Your email then says, "We have the court

1 cases to illustrate that DOJ has a legitimate need  
2 for the question to be included."

3 What court cases were your referring?

4 A I don't recall the exact court cases.

5 Q Did you research those court cases?

6 A I did research a court case where there  
7 was a scenario in which you would need -- it would  
8 be important to have Citizen Voting Age Population  
9 data in order to make a Voting Rights Act claim.

10 Q How did you identify that case?

11 A By a legal research.

12 Q What do you mean by legal research?

13 A Well, I think I talked to -- I'm trying  
14 to think -- I think Mark Neuman may have provided  
15 a case name. I talked to James Uthmeier, who  
16 looked at some cases. Basically said, okay, if  
17 this is the question -- I mean, it's what you do  
18 as an attorney all day long, is to go find cases  
19 to support what you're looking for.

20 Q So Mark Neuman identified for you a case  
21 that would support DOJ's need for this  
22 information?

1           A     Yeah. I said I may have spoken to  
2     Mark Neuman on that. I think he may have provided  
3     it. I don't recall. I know James Uthmeier looked  
4     at some cases.

5           Q     Would he have provided that case for you  
6     on a phone call or by email?

7           A     James?

8           Q     Pardon me?

9                     I'm sorry. Withdraw that question.

10           Q     Would Mr. Newman have provided that case  
11     to you by email or on the phone?

12           A     Well, if he provided it by email, you'd  
13     have it. I don't have the emails in front of me,  
14     so I can't tell you.

15           Q     So by May of 2017, you'd come to the view  
16     that you needed another agency to request a  
17     citizenship question on the census?

18           A     That was based on the preliminary  
19     analysis, yes.

20           Q     You then say in your email, "I will  
21     arrange a meeting with DOJ staff this week to  
22     discuss."

1 Do you see that?

2 A Yes.

3 Q Okay. So before May 2, 2017, you had not  
4 had any discussions with the Department of Justice  
5 about the citizenship question, right?

6 A Not to my knowledge.

7 Q What did you do to arrange a meeting with  
8 DOJ staff to discuss?

9 A I asked Eric Branstad for a name over at  
10 DOJ, and he provided me the name of  
11 Mary -- Mary Jane [sic] Hankey I think it was,  
12 whom I then contacted.

13 Q Okay. Your email refers to the court  
14 cases to illustrate that DOJ has a legitimate need  
15 for the question to be included.

16 A That's what it says, yes.

17 Q What were the other needs that you had  
18 talked about for including the citizenship  
19 question?

20 A I don't recall.

21 Q Okay. And by legitimate need, were you  
22 concerned that other needs that didn't come from

1 DOJ would not be legitimate needs?

2 A No. I think that's just an  
3 imprecise -- the use of the term legitimate,  
4 something to say that it would be a need that  
5 would be considered a government need for the  
6 information.

7 MR. COLANGELO: Counsel, five-minute  
8 break. Let's go off the record.

9 VIDEOGRAPHER: Going off the record. The  
10 time on the video is 11:31 a.m.

11 (Off the record.)

12 VIDEOGRAPHER: This begins Media Unit  
13 Number 3. The time on the video is 11:45 a.m. We  
14 are on the record.

15 BY MR. COLANGELO:

16 Q Okay. Let's mark as Exhibit 11 --

17 MR. GARDNER: No. I think 12.

18 MR. COLANGELO: 12. Sorry. Thank you.

19 (Plaintiffs' Exhibit 12, Email, was  
20 marked.)

21 BY MR. COLANGELO:

22 Q This is document stamped 3699.

1           Mr. Comstock, do you have Exhibit 12 in  
2 front of you?

3           A     Uh-huh.

4           Q     Have you seen this email before?

5           A     No. I mean, part of it I clearly did,  
6 because it's to me, but -- oh, that's the previous  
7 email. So I haven't seen the upper part of this  
8 document.

9           Q     Okay. So this is an -- an email chain  
10 from Brooke Alexander forwarding to Wendy Teramoto  
11 the May 2nd email that the Secretary wrote to you  
12 where he says I'm mystified why nothing has been  
13 done in response to my months' old request; is  
14 that right?

15          A     Yeah. Appears to be, yeah.

16          Q     So it looks like Brooke forwarded the  
17 Secretary's email to Wendy?

18          A     Correct.

19          Q     Is that her regular practice?

20               MR. GARDNER: Objection. Calls for  
21 speculation.

22               THE WITNESS: Yeah. I couldn't tell you.

1 BY MR. ADAMS:

2 Q Do you know why she did in this case?

3 A I don't know.

4 Q It's because the Secretary was expressing  
5 frustration and one concern was that one of his  
6 priorities had not yet been accomplished and she  
7 wanted the chief of staff to know?

8 A I don't know.

9 Q Would that be your surmise?

10 MR. GARDNER: Objection. Form.

11 THE WITNESS: It's certainly a  
12 possibility.

13 BY MR. COLANGELO:

14 Q And then the -- strike that.

15 Wendy, from this chain, it appears, sends  
16 an email to the Secretary and says, "I continue to  
17 talk frequently with Mark Neuman, and we often  
18 have dinner together. He will not leave L-E-S" or  
19 "LES, but is in love with the census and talks  
20 about it nonstop."

21 Do you see that?

22 A Yes.

1           Q     Why would the Secretary's concern about  
2     the citizenship question prompt Wendy to bring up  
3     Mark Neuman?

4           MR. GARDNER:  Objection.  Lack of  
5     foundation.  Calls for speculation.

6           THE WITNESS:  Again, he was the primary  
7     transition team person advising us on Census.

8     BY MR. COLANGELO:

9           Q     Okay.  And the email also says, "Do you  
10    want me to set up another meeting?"

11           Do you see that?

12           A     I see that.

13           Q     What's the earlier meeting that she's  
14    referring to?

15           MR. GARDNER:  Objection.  Calls for  
16    speculation.

17           THE WITNESS:  I don't know.

18     BY MR. COLANGELO:

19           Q     Had you attended the meetings with the  
20    Secretary and Mr. Neuman on the citizenship  
21    question before May 2, 2017?

22           A     I don't know.  I had attended meetings

1 with the Secretary and Mr. Newman on the census.

2 Q Before May 2017?

3 A Yes.

4 Q How many times?

5 A I don't know. Two times, three times.

6 I'd -- you'd have to check his count.

7 Q Okay. And the citizenship question was  
8 discussed in those earlier meetings?

9 A I don't recall.

10 Q And you see the Secretary writes back and  
11 says, "Let's try to stick him in there for a few  
12 days to fact find."

13 A Yes.

14 Q Do you see that?

15 Were you aware of that request?

16 A I was aware that the Secretary was  
17 distressed with Director Thompson who had just  
18 told us that he had massively overrun the CEDCaP  
19 budget and failed to warn us that that was coming.  
20 So the Secretary was not happy with the Census  
21 leadership at the time and was trying to find  
22 someone who could be -- provide us better

1 information about what was going on at Census.

2 Q Okay. This email refers to the  
3 citizenship question; is that right?

4 MR. GARDNER: Objection. Calls for  
5 speculation. Lack of foundation.

6 THE WITNESS: I know the forwarded email  
7 refers to the citizenship question. There's  
8 nothing in Ms. Teramoto's email that refers to  
9 citizenship.

10 BY MR. COLANGELO:

11 Q But she's not forwarding any other  
12 information there, correct?

13 A Well, I can't see what's blacked out, so  
14 I have no idea what else is discussed there. But  
15 I know that there is a large amount of black out,  
16 so presumably quite a number of other things were  
17 discussed.

18 Q And was Mark Neuman placed in  
19 Census Bureau to fact find?

20 A No.

21 Q Why not?

22 A I imagine because he had a much better

1     paying job where he's at.

2           Q     Okay. And did Wendy or the Secretary  
3     convey this request to you at the time?

4           A     Wendy and the Secretary discussed with me  
5     the possibility of putting Mark Newman in Census  
6     so that we could get a handful of what's going on  
7     with the budget, yes.

8           Q     And did you discuss putting Mark Neuman  
9     in Census so he could help facilitate the  
10    inclusion of a citizenship question?

11          A     That was never discussed -- or not to my  
12    knowledge.

13               MR. COLANGELO: Let's mark as Exhibit 13.

14               (Pplaintiffs' Exhibit 13, Email, was  
15    marked.)

16    BY MR. COLANGELO:

17          Q     Do you have the document that has been  
18    marked Exhibit 13?

19          A     Yes.

20          Q     For the record, this is Bates stamp 3071  
21    and this email from Eric Branstad to Matthew  
22    Flynn, Subject Line DOJ contact, "Who is the best

1 counterpart to reach out to at DOJ regarding  
2 census and legislative issues?"

3 Have you seen this before?

4 A Yes.

5 Q When was the last time you saw it before  
6 today?

7 A Yesterday.

8 Q Do you know who Matthew Flynn is?

9 A I have no idea who Matthew Flynn is.

10 Q You testified before our last break that  
11 you asked Eric to get you a point of contact at  
12 the Justice Department, right?

13 A Correct.

14 Q So does this email exchange reflect Eric  
15 followed up on that request?

16 A Yes.

17 Q And he forwards it to you on May 3; is  
18 that right?

19 A It looks like he forwarded it to me --  
20 (Conference call interruption.)

21 THE WITNESS: It looks like he sent it to  
22 me on May 4th and I -- May 3rd and I replied

1 May 4th early in the morning.

2 BY MR. COLANGELO:

3 Q Saying, "Thanks, Eric. Earl."

4 Correct?

5 A Yes.

6 Q So on May 2nd, the Secretary asked you  
7 why nothing had been done in response to his  
8 months' old request. You told him you needed to  
9 get the Justice Department to request the  
10 question. You also told him that you would set up  
11 meetings with the Justice Department to discuss.  
12 And then after that, you asked Eric Branstad to  
13 get you a point of contact at the Justice  
14 Department and he did, right?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: That appears to be the  
17 sequence.

18 BY MR. COLANGELO:

19 Q Okay. And you testified earlier that you  
20 hadn't ever spoken to the Justice Department  
21 before that on the citizenship issue?

22 A That's correct.

1 MR. COLANGELO: Let's mark Exhibit 14.

2 (Plaintiffs' Exhibit 14, Email, was  
3 marked.)

4 BY MR. COLANGELO:

5 Q Exhibit 14 is document stamped 2462. You  
6 have Exhibit 14 in front of you?

7 A I do.

8 Q And why were you contacting Mary Blanche?  
9 Her surname is redacted on this email, I assume  
10 for personal privacy reasons. But this is Mary  
11 Blanche Hankey, correct?

12 A Yes.

13 Q Why were you contacting Mary Blanche  
14 Hankey?

15 A That was the name that Eric Branstad said  
16 he'd provide me.

17 Q Okay. And do you know where in the  
18 White House -- strike that.

19 Do you know where in the  
20 Justice Department she worked?

21 A She was advisor for -- to  
22 Attorney General Sessions.

1 Q So she worked for the Attorney General?

2 A Correct.

3 Q And you reached out to her to talk about  
4 the citizenship question, right?

5 A Amongst other things, yes.

6 Q And you reached out to her and asked her  
7 for times for a call that day, right?

8 A That's what I'm asking for, yes.

9 Q Okay. Is that because this was an urgent  
10 priority for the Secretary?

11 A I think you can divine from his prior  
12 email that he was hoping I might take a quick  
13 action on this, so I was trying to be responsive.

14 Q So the answer is yes?

15 A I'm not going to speculate as to whether  
16 he thought it was urgent or not, but he was  
17 conveying he would like me to get moving.

18 Q You were treating it as an urgent matter?

19 A Correct.

20 Q And then you -- did you speak to  
21 Ms. Hankey?

22 A I did speak to Ms. Hankey.

1 Q How many times?

2 A I met with her -- I think I spoke with  
3 her by phone and then met with her in her office.

4 Q When did you speak with her by phone?

5 A I couldn't tell you.

6 Q Was it on May 4th?

7 A It's possible.

8 Q And then you met with her in her office,  
9 you said?

10 A Yes.

11 Q When was that meeting?

12 A I don't know the exact date.

13 Q When you spoke to her on the phone, was  
14 anyone else on the call with you?

15 A No.

16 Q Was anyone else on the call on her end?

17 A Not that I was aware of, no.

18 Q When you met with her in person, did  
19 anyone from the Commerce Department go with you?

20 A No.

21 Q Did anyone from the Census Bureau go with  
22 you?

1 A No.

2 Q Was there anyone else in the meeting that  
3 she brought?

4 A No.

5 Q What did you say to her when you spoke to  
6 her on the phone?

7 A That I'd like to come over and discuss  
8 what issues the Justice Department might have with  
9 Commerce that I could be helpful on and talk to  
10 her about an issue that we were interested in.

11 Q And that issue was the citizenship  
12 question?

13 A Correct.

14 Q And what did she say about that?

15 A Let's get together and meet.

16 Q So then you went over to meet with her.  
17 Did she have any issues that she wanted to raise  
18 with you?

19 A I don't recall that Justice had any  
20 particular Commerce issues, no.

21 Q So this was a meeting about the  
22 citizenship question?

1           A     I'd say that was the primary topic.

2           Q     Okay. And what did you say to her when  
3 you met with her in person?

4           A     That we -- the Secretary had asked us to  
5 look into the possibility of adding a citizenship  
6 question, and that since the Justice Department  
7 was the agency that had sponsored the question for  
8 the ACS, it seemed that that was a logical place  
9 to start, and was there someone in the  
10 Justice Department with whom I should speak about  
11 that.

12          Q     And what did she say?

13          A     Let me look into it.

14          Q     How long was the meeting?

15          A     Well, we met for about 20 minutes.

16          Q     Did you explain why the Secretary wanted  
17 the citizenship question?

18          A     No.

19          Q     Did you have an understanding at that  
20 point as to why the Secretary wanted the  
21 citizenship question?

22          A     I've never asked the Secretary why he

1 wanted a citizenship question.

2 Q Did she ask you why it was important to  
3 Commerce Department to add a citizenship question?  
4 She being Ms. Hankey.

5 A No.

6 Q You mentioned earlier that you did some  
7 legal research or that Mark Neuman or others may  
8 have identified cases for you. Did you identify  
9 those cases to Ms. Hankey in that conversations?

10 A I don't recall.

11 Q Did you bring any paper with you to that  
12 meeting?

13 A Not that I recall.

14 Q Did you take notes?

15 A No.

16 Q After the meeting, did you update anyone  
17 at the Commerce Department and your discussion?

18 A I don't recall.

19 Q Did you speak to the Secretary to tell  
20 him that -- on an issue that you understand to be  
21 a priority, you'd gone over to the  
22 Justice Department to make some progress on his

1 request?

2 A I might have mentioned I had a meeting  
3 over there.

4 Q Did you mention it to Wendy?

5 A I might have.

6 Q Did you talk about it with anyone else in  
7 the Office of Policy?

8 A I might have told Eric that I met with  
9 the person he recommended.

10 Q Eric Branstad?

11 A Yes.

12 Q Is the senior White House advisor  
13 position in Office of Policy?

14 A No.

15 Q My question was: Did you talk to anyone  
16 in the Office of Policy about the meeting?

17 A Not that I recall.

18 Q Other than the Secretary, Wendy and Eric,  
19 did you talk to anyone else at the  
20 Commerce Department about that meeting?

21 A Not that I recall.

22 Q Did you talk to Mark Neuman about it?

1           A     Not that I recall.

2           Q     And after you met with Ms. Hankey and she  
3     said she'd look into it, what was the next that  
4     you heard from the Justice Department on this  
5     issue?

6           A     I think when she contacted me, provided a  
7     name.

8           Q     How long after your meeting did she  
9     contact you and provide a name?

10          A     There's an email that documents it, you  
11     could tell from that, but otherwise, I have no  
12     idea.

13          Q     Okay.

14          A     I mean, it was sometime in the next  
15     couple weeks, but --

16          Q     And what name did she give you?

17          A     I -- I know I put it in a memo to the  
18     Secretary later on, so you'd have to look at that  
19     memo.

20          Q     Is it James McHenry?

21          A     That sounds like the right name.

22          Q     When she spoke to you to pass along

1 James McHenry's name, what did she say about why  
2 she was directing you to him?

3 A She didn't say much. Just said this  
4 would be the best guy to talk to.

5 Q Okay. Had you spoken to James McHenry  
6 before?

7 A Never talked to him before.

8 Q Did she tell you what his position was in  
9 the Department of Justice?

10 A She might have.

11 Q What was his position?

12 A I don't know, actually.

13 Q After she gave you Mr. McHenry's name,  
14 what did you do next to contact him?

15 A I called him on the phone.

16 Q And when you spoke to him on the phone  
17 what did you say?

18 A I outlined that we were interested in  
19 seeing what kind of level of interest the  
20 Justice Department would have in requesting the  
21 citizenship question be asked -- added to the  
22 decennial census.

1           Q    And did you tell him why the  
2 Commerce Department wanted the Justice Department  
3 to make that request?

4           A    Because that was our understanding of the  
5 process. They were the people that needed it for  
6 ACS, and our understanding was that it might be  
7 useful for them to have it at a more granule  
8 level, which would be needed -- you'd need to put  
9 it on the decennial census to do that.

10          Q    So you were -- you told him that the  
11 Commerce Secretary wanted the question and wanted  
12 to know if DOJ would ask for the Census Bureau to  
13 add the question; is that right?

14          A    Those are your words.

15          Q    Well, I'm asking you to tell me yes or  
16 no.

17          A    Well, if the question is yes or no, then  
18 the answer is no.

19          Q    Okay. How would you put it in your  
20 words?

21          A    In my words, what I told him was that we  
22 were exploring the possibility and wanting to know

1 the level of interest at the Justice Department in  
2 making such a request, would this be information  
3 they could use?

4 Q So this is the shortly -- this is shortly  
5 after the Secretary of Commerce emailed you and  
6 said I am mystified why nothing had been done in  
7 response to my months' old request?

8 A Right.

9 Q But your testimony is that you conveyed  
10 to the Justice Department that you were exploring  
11 the issue?

12 A As I explained before, when -- when the  
13 Secretary says he would like to do something,  
14 there's a presumption that we will attempt to do  
15 that. That's subject to revision as more  
16 information is made available. So I'm exploring  
17 what is necessary to follow through on the  
18 Secretary's request. That request may be modified  
19 or changed, based on the information that I  
20 provide.

21 Q Okay. How many times did you speak to  
22 Mr. McHenry?

1           A     I think three or four times.

2           Q     And what was the next time you spoke to  
3 him after the initial phone call?

4           A     Maybe a week later.

5           Q     Okay. And what did he say when he -- did  
6 he call you or did you call him?

7           A     I don't recall.

8           Q     And what did you discuss on that  
9 conversation?

10          A     That he was still exploring the question.

11          Q     How long was that conversation?

12          A     Five minutes.

13          Q     Okay. So he didn't have anything new to  
14 report?

15          A     Right.

16          Q     Okay. And you said you spoke to him at  
17 least a couple more times; is that right?

18          A     Again, I don't recall the exact number of  
19 times, but somewhere in the vicinity of three or  
20 four times.

21          Q     So after the second call where he said he  
22 was still exploring it, tell me about the next

1 conversation?

2 A Memory serves, I think the next  
3 conversation was a similar one. He was still  
4 looking into the matter and then -- and then the  
5 last conversation he and I had, he directed me to  
6 somebody at the Department of Homeland Security.

7 Q Okay. And over what period of time were  
8 you talking to Mr. McHenry on the phone?

9 A Probably over the course of a month.

10 Q So this was primarily in May of 2017?

11 A I honestly don't recall, but sometime in  
12 May, early June.

13 Q And who did he direct you to at the  
14 Department of Homeland Security?

15 A I don't remember the person's name.

16 Q Was it Gene Hamilton?

17 A Again, I know I prepared a memo for the  
18 Secretary that had the name. So if that's the  
19 name that was on the memo, then, yes, that would  
20 be the person I spoke with.

21 Q How many times did you speak to your  
22 point of contact at the Department of

1 Homeland Security?

2 A Again, I think it was -- I think this was  
3 like two or three times.

4 Q And what did you say when you first spoke  
5 to Mr. Hamilton?

6 A Same -- same basic message, we're looking  
7 into the -- exploring the possibility of putting a  
8 census question on -- a citizenship question on  
9 the decennial census, would this be information  
10 that the Department of Homeland Security would  
11 need or use, and could he answer that, and his  
12 response was, let me look into it.

13 Q Now, the Department of Homeland Security  
14 wasn't the original requester for the ACS  
15 citizenship question, to your understanding,  
16 correct?

17 A Correct.

18 Q Was it your view that the Department of  
19 Homeland Security would also be a legitimate  
20 requester of this information?

21 A Legitimate is not the right word, but  
22 the -- I think my view was, let me see if

1       there's -- what their explanation would be, but  
2       they were obviously not our first choice.

3           Q     So you were looking for an agency to make  
4       this ask?

5           A     Again, my understanding of the process,  
6       based on the research I've been able to do, and  
7       consequently was advising the Secretary was an  
8       agency needed to make the request; therefore, you  
9       have to find an agency that would have a reason to  
10      be using this information. And Justice,  
11      obviously, was the primary recipient of the CVAP  
12      data from the ACS, so they were the logical place  
13      to start. Justice then says go to  
14      Homeland Security, and I say, okay, maybe there's  
15      something about Homeland Security that I don't  
16      know about that might justify this data. So you  
17      follow up on a call, get more information, informs  
18      your decision, you might change it.

19          Q     And so my question was: So you were  
20      looking for an agency to make this ask and --

21          A     Correct. In order to implement the  
22      process that had been outlined to us, you needed

1 an agency. So that was my task at the time.

2 Q Thank you.

3 MR. COLANGELO: Let's mark this

4 Exhibit --

5 MR. GARDNER: 15.

6 MR. COLANGELO: -- 15.

7 (Plaintiffs' Exhibit 15, Memo, was  
8 marked.)

9 THE WITNESS: The very memo I was  
10 speaking of.

11 BY MR. COLANGELO:

12 Q Exhibit 15 is document stamped 9834.

13 Mr. Comstock, do you have Exhibit 15 if  
14 front of you?

15 A I do.

16 Q Is this the very memo you were just  
17 speaking about?

18 A It's the very memo I was just speaking  
19 about.

20 Q And what's the date on this memo?

21 A September 8th.

22 Q And you see in the second paragraph of

1     this memo, the sentence that says, "James directed  
2     me to Gene Hamilton at the Department of  
3     Homeland Security."

4           A     Correct.

5           Q     So the person you were speaking to at DHS  
6     was Gene Hamilton, right?

7           A     Apparently so, yes.

8           Q     The -- in that paragraph -- strike that.

9                     This is a memo from you to the Secretary  
10    dated September 8th of 2017, correct?

11          A     Correct.

12          Q     Why did you prepare this memo?

13          A     Because the Secretary was asking about  
14    the lack of progress and said he was prepared to  
15    call the Attorney General, and so he needed the  
16    timeline of who I had spoken to.

17          Q     Okay. What do you mean by lack of  
18    progress?

19          A     Well, obviously, we're now September 8th,  
20    and he inquired on May -- May whatever the date  
21    was, 2nd, 5th, whatever it was, saying how come we  
22    haven't made more progress? Three months later we

1 don't have any response from the  
2 Justice Department, so --

3 Q In his May 2nd email it said, why has  
4 nothing been done in response to my months' old  
5 request?

6 A That is what it says, yes.

7 Q So the Secretary had been asking about  
8 this since the early spring of 2017?

9 A Yes.

10 Q And you testified and this memo says you  
11 met in person with Mary Blanche and she said what?

12 A Well, as I said, she directed me to  
13 James McHenry.

14 Q And then after speaking with Mr. McHenry,  
15 he told you what?

16 A He directed me to Gene Hamilton.

17 Q Okay. And then after several phone calls  
18 with Gene Hamilton, according to this memo, he  
19 relayed that, "After discussion, DHS really felt  
20 it was best handled by the Justice Department."

21 Do you see that?

22 A I see that.

1           Q     Why did Mr. Hamilton feel this was best  
2 handled by the Justice Department?

3           A     As relayed to me, DHS felt the agency  
4 that would most utilize this data was  
5 Department of Justice, which was our  
6 original conclusion.

7           Q     So DHS said they were not going to make  
8 this request, right?

9           A     Well, Gene never made a commitment, one  
10 way or the other, for the department. He simply  
11 directed me back to the other department. It's  
12 not an uncommon experience in the federal  
13 government.

14          Q     Tell me what's not uncommon in the  
15 federal government.

16          A     Being directed to somebody.

17          Q     Your memo then says at that point the  
18 conversation ceased.

19          A     Correct.

20          Q     What do you mean by that?

21          A     Means that I did not talk to  
22 Mary Blanche, James McHenry or Gene Hamilton after

1     that point in time.

2           Q     You didn't, at this point, have a request  
3     from the Justice Department, right?

4           A     That's correct.

5           Q     Okay. And what did you ask  
6     James Uthmeier after that point?

7                   MR. GARDNER:  Objection.  Calls for  
8     information --

9                   (Thereupon, the court reporter  
10    clarified.)

11                  MR. GARDNER:  Sorry.  I have a cold.

12                  Objection.  Calls for information that's  
13    subject to privilege.  I'll instruct the witness  
14    not to answer.

15                  MR. GERSCH:  What privilege?

16                  MR. GARDNER:  Attorney -- thank you.  I  
17    thought we were doing one at a time.

18                  Attorney-client privilege.

19                  MR. GERSCH:  Sorry.

20    BY MR. COLANGELO:

21           Q     Did you identify any facts for  
22    Mr. Uthmeier?

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: Can you restate the  
3 question?

4 BY MR. COLANGELO:

5 Q Sure. When you -- was this your first  
6 contact with Mr. Uthmeier on the topic of the  
7 citizenship question?

8 A Well, you mean this memo or this  
9 reference?

10 Q This reference.

11 A Well, it says -- at this -- at that  
12 point, the conversation ceased, and I asked  
13 James Uthmeier, who had by then joined -- this is  
14 referring back in time. I don't know exactly when  
15 James joined OGC, but it was before September, so  
16 I think he joined -- I don't know -- in June  
17 maybe. I don't know.

18 Q I understand this memo to be a reference  
19 to discussions you had with the Justice Department  
20 in May; is that right?

21 A It doesn't exactly specify the time  
22 frame, but, yes, from early May when I met with

1 Mary Blanche, through when my conversations with  
2 Gene Hamilton ceased, I don't know exactly what  
3 that time frame was. It was four or six weeks.

4 Q So I'm asking before May of 2017, had you  
5 ever discussed the citizenship question with  
6 James Uthmeier?

7 A And I cannot answer that directly,  
8 because I don't recall when James Uthmeier joined  
9 the department.

10 Q Okay. So you do recall discussing the  
11 citizenship question with him, but you don't  
12 remember when it was?

13 A Yes.

14 Q And you don't remember if it was before  
15 May or June of 2017?

16 A Well, it couldn't have been before he  
17 joined the department, so whenever that was.

18 Q Is it your understanding that  
19 Mr. Uthmeier had a position in the Department of  
20 Commerce that was not within the Office of  
21 General Counsel and he was then moved into a  
22 position in the Office of General Counsel?

1 MR. GARDNER: Objection to form.

2 THE WITNESS: To my knowledge, the first  
3 time I interacted with James, he was in the  
4 Office of General Counsel.

5 MR. COLANGELO: Okay. Okay. Let's mark  
6 Exhibit 16.

7 (Plaintiffs' Exhibit 16, Memo, was  
8 marked.)

9 BY MR. COLANGELO:

10 Q Exhibit 16 is document stamped 2458.

11 Do you have Exhibit 16 in front of you,  
12 Mr. Comstock?

13 A I do.

14 Q Have you seen this email before?

15 A Not since I've sent it to Wendy on  
16 Saturday the 16th of September.

17 Q Why did you send Ms. Teramoto your  
18 September 8th memo on September 16, 2017?

19 A I don't recall exactly, but, likely,  
20 because she may have been setting up the call with  
21 the Attorney General.

22 Q And which call with the Attorney General

1 was that?

2 A A call from the Secretary to talk to the  
3 Attorney General about whether or not Justice  
4 would be interested in a citizenship question.

5 Q And why was the Secretary talking to the  
6 Attorney General about whether or not Justice  
7 would be interested in the citizenship question?

8 A Again, if -- if the -- if the  
9 Justice Department was not going to request the  
10 question, had no use for the information, then  
11 that would probably put an end to the citizenship  
12 question.

13 Q And the Secretary wanted the citizenship  
14 question?

15 A I think he felt -- well, I don't know  
16 what he felt. Yes. He was continuing to explore  
17 that possibility.

18 MS. BOUTIN: I'm sorry. Can you speak  
19 up?

20 THE WITNESS: I don't know what he felt,  
21 but he was continuing to explore the possibility.

22 BY MR. COLANGELO:

1           Q     And when did the Secretary speak with the  
2     Attorney General?

3           A     I don't know that.

4           Q     Were you on that call?

5           A     I don't recall being on the call.

6           Q     Who else was on the call?

7           A     I don't know.

8           Q     Okay. Did -- did Wendy ask to see this  
9     memo, or did you send it to her without her  
10    asking?

11          A     Again, I don't recall the context, but  
12    based on what the memo says, it appears she might  
13    have asked --

14               (Thereupon, the court reporter  
15    clarified.)

16               THE WITNESS: For it.

17    BY MR. COLANGELO:

18          Q     Okay. I want to go back for a second  
19    here, May 2nd email --

20               MR. GARDNER: Which exhibit number?

21               MR. COLANGELO: This is Exhibit --

22               MR. GARDNER: Oh, the 12 --

1           MR. COLANGELO: This is Exhibit -- no. I  
2 was thinking of Exhibit 10.

3 BY MR. COLANGELO:

4           Q How did you come to the view before ever  
5 talking to DOJ that DOJ should request this  
6 information?

7           A Again, if DOJ was the governmental  
8 organization that had questioned the information  
9 on the ACS, then it would stand to reason that  
10 they would be the people that would also be  
11 interested in the information on the decennial,  
12 and they're also the party responsible for  
13 enforcing the voting rights.

14          Q And how did you come to the view before  
15 ever talking to DOJ that DOJ had a legitimate need  
16 for the question to be included?

17          A If they enforced the Voting Rights Act --  
18 if you're going to make a Voting Rights Act case,  
19 then they would be the people that would  
20 have -- need the information.

21          Q And you researched those Voting Rights  
22 Act cases or that Voting Rights case on your own?

1           A     Again, I think in doing some basic  
2     research on it, it was pointed out there was a  
3     case where the Court had said you could -- you  
4     would need more granule information to answer this  
5     question, which would then support a citizenship  
6     question.

7           Q     And you told me before that you're not a  
8     voting rights lawyer, right?

9           A     Again, what do you mean by a voting  
10    rights lawyer?

11          Q     Have you ever practiced voting rights  
12    law?

13          A     No.

14          Q     Have you ever tried a voting rights case?

15          A     No.

16          Q     Have you ever advised a client on a  
17    voting rights matter?

18          A     No.

19          Q     Have you ever practiced redistricting  
20    law, tried a redistricting case --

21          A     No.

22          Q     -- or advised a client on a redistricting

1 matter?

2 A No.

3 MR. GARDNER: Make sure he finishes his  
4 question before you answer.

5 THE WITNESS: No.

6 BY MR. COLANGELO:

7 Q Have you ever litigated a case under the  
8 Voting Rights Act?

9 A No.

10 Q Have you ever litigated a redistricting  
11 case?

12 A No.

13 MR. COLANGELO: Let's mark as Exhibit 17  
14 a document Bates-stamped 3705.

15 (Plaintiffs' Exhibit 17, Meeting  
16 notification, was marked.)

17 BY MR. COLANGELO:

18 Q Mr. Comstock, do you have 3705 in front  
19 of you?

20 A I do.

21 Q And what is this?

22 A It appears to be some kind of meeting

1 notification.

2 Q Okay. Does this help you date your  
3 interactions with Mr. Uthmeier regarding the  
4 citizenship question?

5 A Well, it appears that we might have had a  
6 meeting on the 28th of June, 2017.

7 Q And does this help you answer my earlier  
8 question regarding whether this was your earliest  
9 discussion with Mr. Uthmeier on the citizenship  
10 question or whether you, in fact, spoke to him  
11 before that?

12 MR. GARDNER: Objection. Form.

13 THE WITNESS: Again, I don't recall when  
14 James started working for the department. I don't  
15 recall when we had our first conversation on the  
16 citizenship question.

17 BY MR. COLANGELO:

18 Q And what did you tell Mr. Uthmeier in  
19 that conversation?

20 MR. GARDNER: Objection to the extent it  
21 calls for disclosure of information subject to the  
22 attorney-client privilege. To the extent it does,

1 I would instruct the witness not to answer.

2 Can you answer the question without  
3 disclosing confidential communications?

4 THE WITNESS: I have no recollection of  
5 this meeting, so I couldn't tell you what we  
6 discussed.

7 MR. GARDNER: Problem solved.

8 BY MR. COLANGELO:

9 Q Easy enough.

10 Was this your first interaction with the  
11 Office of General Counsel on this issue?

12 A Again, I have no idea.

13 Q As you were talking to Ms. Hankey at the  
14 Justice Department, Mr. McHenry at the  
15 Justice Department and Mr. Hamilton at DHS --

16 A Yeah.

17 Q -- in the spring of 2017, were you  
18 keeping the Secretary informed of those  
19 conversations?

20 A I might have mentioned them.

21 Q In what context would you have mentioned  
22 them?

1           A     Mr. Secretary, I contacted the  
2     Justice Department today. I would not have  
3     given -- I mean, there was nothing to report. So  
4     I hadn't made any progress.

5           Q     Well, he was frustrated there was no  
6     request yet?

7           A     Right.

8           Q     So one of the things to report might have  
9     been --

10          A     That I contacted them, yes.

11          Q     Okay. And did you keep Ms. Teramoto  
12     informed during that time period?

13          A     Again, I might have. At that time  
14     period, we operated in bullpens, so we were  
15     all -- there were five people in the same room.  
16     So it's entirely possible I might have mentioned I  
17     was going to the Justice Department or I had  
18     spoken with the Justice Department, yes.

19          Q     I'm sorry. If you were not finished.

20          A     Nope.

21          Q     Who was sitting in the bullpen with you?

22          A     Wendy Teramoto, Eric Branstad,

1 James Rockas, me, and occasionally Izzy Hernandez.

2 Q Who is James Rockas?

3 A He was acting press secretary at the  
4 time.

5 Q And who is Izzy Hernandez?

6 A Israel Hernandez, he was the acting -- or  
7 I'm not sure what his formal title was. I think  
8 he was deputy chief of staff.

9 Q And where was the bullpen you referred  
10 to?

11 A It was the -- what is now the chief of  
12 staff.

13 Q And there were five of you working in the  
14 office?

15 A Correct.

16 Q How long were the five of you working in  
17 that office together?

18 A Maybe nine months.

19 Q So from January of 2018 through the  
20 end -- strike that.

21 From January 2017 through the end of  
22 the --

1 A No.

2 Q -- summer --

3 A No. The bullpen was set up, I think, in  
4 March through the end of the year.

5 Q Why did you work in a bullpen?

6 A Because that was the form that the  
7 Secretary and Ms. Teramoto felt was most  
8 effective.

9 Q And was it near the Secretary's office?

10 A It's located -- there's the Secretary's  
11 office, there's the anteroom to the Secretary's  
12 office, and it's located right next to that.

13 Q And at some point, you stopped working in  
14 a bullpen?

15 A Yes.

16 Q Did it become less effective?

17 A I think that was the chief of staff's  
18 determination, yes.

19 MR. COLANGELO: Let's mark Document 3702  
20 as Exhibit 18.

21 (Plaintiffs' Exhibit 18, Email, was  
22 marked.)

1 BY MR. COLANGELO:

2 Q Mr. Comstock, do you have Exhibit 18 in  
3 front of you?

4 A I do.

5 Q Have you seen this document before?

6 A No.

7 Q Okay. And you testified before that  
8 Mr. Langdon works for you in the Office of Policy  
9 and Strategic Planning, correct?

10 A Yes.

11 Q His -- if you go to the second page of  
12 this exhibit, the page stamped 3703, Mr. Langdon  
13 says, "I apologize for not answering sooner, but I  
14 honestly have been in meetings with SWR all  
15 afternoon."

16 Do you see that?

17 A Yes.

18 Q And do you understand SWR to refer to  
19 Secretary Wilbur Ross?

20 A Yes.

21 Q What meetings was he referring to?

22 MR. GARDNER: Objection. Calls for

1 speculation. Lack of foundation.

2 THE WITNESS: I don't know.

3 BY MR. COLANGELO:

4 Q Were you in meetings with the Secretary  
5 and David Langdon on May 24th of 2017?

6 A It's entirely possible.

7 Q Is it common for staff in the Office of  
8 Policy to attend meetings with the Secretary that  
9 you wouldn't be in?

10 A Not common, but it would -- at that time  
11 frame, it would depend on what else I was working  
12 on. I might have been off working on sugar  
13 negotiations, saw-fit lumber --

14 (Thereupon, the court reporter  
15 clarified.)

16 THE WITNESS: I said I might have been  
17 working on sugar negotiations, which were going on  
18 at the time. We have a saw-fit lumber case. We  
19 were beginning work on steel 232 investigation.  
20 We had fisheries issues. So any number of things  
21 could have kept me from the meeting.

22 BY MR. COLANGELO:

1           Q    Okay.  And if you weren't in the meeting,  
2           would it be typical for Ms. Teramoto to be there?

3           A    Again, it would depend on what her  
4           schedule was.

5           Q    Okay.  You'll see from this email at the  
6           top of Page 3702, that David Langdon is reporting  
7           to several people, quote, the Secretary seemed  
8           interested on subjects and puzzled why citizenship  
9           is not included in 2020.

10                  Do you see that?

11           A    Yes.

12           Q    Okay.  Do you remember a meeting where  
13           the Secretary was puzzled why citizenship was not  
14           included?

15           A    I don't recall such a meeting, but --

16           Q    And why does Mr. Langdon say the  
17           Secretary seemed puzzled why citizenship is not  
18           included?

19                  MR. GARDNER:  Objection.  Calls for  
20           speculation.

21                  THE WITNESS:  Again, the Secretary was  
22           clear.  He did not understand why a citizenship

1 question was not included, so he asked us to look  
2 into the matter.

3 BY MR. COLANGELO:

4 Q Okay. And then you see that Mr. Langdon  
5 sent the email to Lisa Blummerman. Am I saying  
6 that right?

7 A I think it's pronounced Blummerman.

8 Q Okay. Mr. Langdon sent the email to  
9 Lisa Blummerman at 10:51 p.m. on May 24.

10 Can you tell me who Ms. Blummerman is?

11 A She was -- I believe at the time, in some  
12 kind of acting capacity. I don't know if she was  
13 the acting deputy director or whether she was the  
14 person in charge of budget. If you notice further  
15 down in the conversation, Lisa and I are happy to  
16 discuss the lifecycle stuff, which was beginning  
17 to become an issue. So Lisa, to my recollection,  
18 is largely budget side.

19 Q Is it your understanding that at the  
20 time, Ms. Blummerman was the associate director  
21 for decennial programs?

22 A That's entirely possible.

1           Q     And is the associate director for  
2     decennial programs effectively the head of 2020  
3     census?

4           A     I believe that's correct, yes.

5           Q     And you see that Mr. Langdon has asked  
6     Ms. Blumnerman for an answer on the citizenship  
7     question ideally this evening?

8           A     That's what his mail says.

9           Q     Okay. It's fair to say that this was a  
10    matter of some urgency?

11           MR. GARDNER: Objection. Form.

12           THE WITNESS: Again, one of the biggest  
13    roles that I play is expediting things along.  
14    Because you have people from the private sector  
15    who are used to a much faster speed than the  
16    government usually operates at. So we spend a lot  
17    of time expediting things to get things back in  
18    place. So this is not uncommon for us to say  
19    everything the Secretary is requesting is urgent.  
20    BY MR. COLANGELO:

21           Q     Let's go back to Exhibit 7. Do you have  
22    that in front of you?

1           A     Just a minute.

2                     Yes.

3           Q     Okay. And Exhibit 7 is the email  
4 exchange with Kris Kobach; is that right?

5           A     It's an email exchange between  
6 Kris Kobach and Wendy Teramoto.

7           Q     And the Secretary, correct, on the second  
8 page?

9           A     Yes. Appears to be one to the Secretary  
10 on the second page.

11          Q     Okay.

12          A     Though it's blanked out as to who it goes  
13 to.

14          Q     If I represent to you that the government  
15 has represented to us that this was an email to  
16 the Secretary and that they've blanked out his  
17 name for personal privacy reasons, can we agree  
18 that it's an email to the Secretary on July 14th?

19          A     I'll stipulate to that, yes.

20          Q     And Mr. Gardner will tell me after lunch  
21 if that's wrong.

22                     The -- so you see that the -- that

1 Mr. Kobach, who identifies himself as the Kansas  
2 Secretary of State, emailed the Secretary on  
3 July 14, 2017, correct?

4 A Correct.

5 MR. GARDNER: Objection. Lack of  
6 foundation.

7 BY MR. COLANGELO:

8 Q And you'll see that it says I'm following  
9 up on our telephone discussion from a few months  
10 ago, correct?

11 MR. GARDNER: Objection. Lack of  
12 foundation.

13 THE WITNESS: And you're reading from the  
14 email. So I have no idea if the email is correct  
15 or not.

16 BY MR. COLANGELO:

17 Q Did the Secretary ever tell you that he  
18 spoke to Kris Kobach?

19 MR. GARDNER: Objection. Asked and  
20 answered.

21 BY MR. COLANGELO:

22 Q You can still answer.

1 A No.

2 Q Sorry. We were speaking at the same  
3 time.

4 A I don't recall him ever telling me that  
5 he spoke to Kris Kobach.

6 Q This email reads, "As you may recall, we  
7 talked about the fact that the U.S. Census does  
8 not currently ask respondents their citizenship."

9 Do you see that?

10 A I see that.

11 Q The email also reads, "It also leads to  
12 the problem that aliens who do not actually reside  
13 in the United States are still counted for  
14 Congressional apportionment purposes."

15 Do you see that?

16 A I see that.

17 Q Did the Secretary ever tell you he was  
18 concerned about the problem that aliens who do not  
19 reside in the United States are still counted for  
20 Congressional apportionment purposes?

21 A He never expressed an opinion on that.

22 Q And when the Secretary asked you on

1 March 10, 2017 about the census and the  
2 citizenship question, did he ask you in the  
3 context of whether noncitizens should be included  
4 for Congressional apportionment purposes?

5 A He discussed Congressional apportionment  
6 purposes. If asked were the noncitizens counted,  
7 and we answered the question, which is they are  
8 counted.

9 Q Well, you testified the link you sent him  
10 was the link to the Census Bureau's web page on  
11 whether noncitizens are counted for apportionment?

12 A That's correct. Well, I don't believe  
13 you can find a web page on the Census that doesn't  
14 speak to it in that context, whether noncitizens  
15 are counted other than for apportionment. That's  
16 the question that we asked. Do we count  
17 noncitizens? The answer is yes. What is the  
18 Census used for? It's used for apportionment.  
19 That's its primary function.

20 Q And you'll see that -- going back to the  
21 first page of Exhibit 7, Ms. Teramoto has written  
22 to Mr. Kobach, "Kris, can you do a call with the

1 Secretary and Izzy tomorrow at 11:00 a.m.?"

2 A Correct.

3 Q And that's Izzy Hernandez, correct?

4 A I would believe that's the reference  
5 she's making, yes.

6 Q And he's copied at the top of this page,  
7 correct?

8 A Yes, he is.

9 Q Did you ever discuss with Izzy Hernandez  
10 a call with Mr. Kobach and the Secretary?

11 A I did not.

12 Q Did you ever discuss the citizenship  
13 question with Mr. Hernandez, at all?

14 A I think we discussed it once or twice.

15 Q And when were those conversations?

16 A I don't recall exactly.

17 Q Was it in the summer of 2017?

18 A It was sometime in the spring/summer of  
19 2017.

20 Q Okay. So you had been working on the  
21 citizenship question for some number of months by  
22 late July of 2017; is that right?

1           A     Correct.

2           Q     Okay. But your testimony is that the  
3     Secretary had a phone call with Kris Kobach on  
4     that issue and nobody told you about it?

5           MR. GARDNER: Objection.  
6     Mischaracterizes the witness's testimony.

7           THE WITNESS: My testimony is he did not  
8     discuss it with me.

9     BY MR. COLANGELO:

10          Q     Did anyone tell you that the Secretary  
11     spoke to Kris Kobach about this issue?

12          A     Wendy might have mentioned it.

13          Q     And what do you remember Wendy said about  
14     it?

15          A     That the Secretary had a conversation  
16     with Kris Kobach.

17          Q     What did she describe about that phone  
18     call?

19          A     She didn't.

20          Q     And did you ask for any other information  
21     on it?

22          A     I didn't.

1           Q    On an issue that you'd been working on  
2   for five months?

3           A    It's not really relevant to the process I  
4   was working on.

5           MR. COLANGELO:  Mr. Gardner, is now a  
6   good time for a lunch break?  I have another --

7           THE WITNESS:  Or you can keep going.

8           MR. COLANGELO:  -- feeling this might be  
9   a good time to stop.

10          MR. GARDNER:  How much -- how much more  
11   time do you think you have, because I think the  
12   witness is fine to keep going if you-all are?

13          MR. COLANGELO:  Well, we have a lot of  
14   people here, and a court reporter and a  
15   videographer.  So I'd rather take a short break  
16   and then -- I probably have -- why don't you let  
17   me look at my notes, I'll tell you once we're off  
18   the record --

19          MR. GARDNER:  Sure.

20          MR. COLANGELO:  -- how much time we left.

21          MR. GARDNER:  Sure.

22          VIDEOGRAPHER:  This concludes Media

1 Unit 3. The time is 12:32 p.m. We are off the  
2 record.

3 (Off the record.)

4 VIDEOGRAPHER: This begins Media Unit  
5 Number 4. The time on the video is 1:19 p.m. We  
6 are on the record.

7 BY MR. COLANGELO:

8 Q Welcome back.

9 A Good to be back.

10 MR. COLANGELO: Let's mark Document 4004  
11 as Exhibit 18.

12 MR. GARDNER: I think 19.

13 MR. COLANGELO: 19. Thank you.

14 (Plaintiffs' Exhibit 19, Email, was  
15 marked.)

16 BY MR. COLANGELO:

17 Q Mr. Comstock, do you have Exhibit 19 in  
18 front of you?

19 A I do.

20 Q And do you recognize this email?

21 A I sent it, so --

22 Q Have you seen it before today?

1           A     Well, obviously, when I wrote it.

2           Q     Okay. This is an email from the  
3     Secretary to you on August 8, 2017, and the  
4     Secretary asks were you on the call this morning  
5     about census?

6                 Do you see that?

7           A     Uh-huh.

8           Q     What call is he referring to?

9           A     I don't know. I'm not sure I was on it.

10          Q     Okay. Did you hear from anybody about a  
11     call on the census on August 8th?

12          A     I have no idea.

13          Q     And you'll see that later in the email,  
14     the Secretary says, "Where is the DOJ in their  
15     analysis? If they still have not come to a  
16     conclusion, please let me know your contact person  
17     and I will call the AG. Wilbur Ross."

18                 Do you see that?

19          A     I see that.

20          Q     And what analysis is the Secretary  
21     referring to?

22          A     Again, this pre-dates the memo I wrote

1 outlining my contacts with the DOJ. So this is a  
2 question about where are we with the DOJ?

3 Q Okay. And you wrote back that evening  
4 saying, "We'll be back shortly with an update on  
5 the census question."

6 A Yes.

7 Q I have two attorneys in the DOC's general  
8 counsel's office working on it?

9 A Yes.

10 Q And you testified one of those two  
11 attorneys was James Uthmeier; is that right?

12 A That's correct.

13 Q And who was the other?

14 A I don't recall.

15 Q Okay. Going back to the Secretary's  
16 email where he says, "If they still have not come  
17 to a conclusion, please let me know your contact  
18 person and I will call the AG."

19 A Yes.

20 Q Did you understand that to mean that the  
21 Secretary was concerned this was not done yet?

22 A He was concerned that we had not made

1 more progress.

2 Q Okay. How did he communicate that  
3 concern to you?

4 A By saying let me know who your contact  
5 person is and I will call the AG.

6 Q This email that you sent in your response  
7 doesn't identify your contact person; is that  
8 right?

9 A That -- well, at least not in the part  
10 that's not blacked out.

11 Q Okay. Do you recall identifying for the  
12 Secretary before the September 8, 2017 memo who  
13 your contact person was at DOJ?

14 A I might have. I probably would have had  
15 to go back and look and see who I spoke to.

16 Q Okay.

17 MR. COLANGELO: Let's mark Document 3984  
18 as Exhibit 20.

19 (Plaintiffs' Exhibit 20, email, was  
20 marked.)

21 THE WITNESS: Thank you.

22 BY MR. COLANGELO:

1           Q    Mr. Comstock, have you seen this email  
2 before?

3           A    It's to me, so, yes.

4           Q    Okay. And this is in further response to  
5 the Secretary's August 8th question; is that  
6 right?

7           A    Would appear to be, yes.

8           Q    Okay. And it says, "Mr. Secretary, we  
9 are preparing a memo and full briefing for you on  
10 the citizenship question. The memo will be ready  
11 by Friday, and we can do the briefing whenever you  
12 are back in the office."

13                  Do you see that?

14           A    Yes.

15           Q    And at this point, you had not received  
16 any information from the Justice Department; is  
17 that right?

18           A    That's correct.

19           Q    Okay. So the memo that you're referring  
20 to is a memo on the citizenship question that  
21 includes no input from DOJ; is that right?

22           A    I -- I don't know. I had not spoken to

1 DOJ, no.

2 Q You're not aware that anyone else had  
3 spoken to DOJ on it?

4 A Actually, I believe counsel might have  
5 been talking to DOJ, but I don't know who they  
6 were talking to.

7 Q And which counsel is that?

8 A James Uthmeier.

9 Q And did he tell you he was talking to  
10 DOJ?

11 A I don't recall.

12 Q So you're not aware that anybody had been  
13 in touch with DOJ in order to get information for  
14 this memo going to the Secretary?

15 A I -- I'm not sure exactly the contents of  
16 the memo to which you're referring, so I don't  
17 know if it contained information from DOJ or not.

18 Q And the Secretary responded by saying, "I  
19 would like to be briefed on Friday by phone."

20 A Yes.

21 Q So it's fair to say that this reflects  
22 the Secretary's continued impatience about getting

1 an answer to his question?

2 A I would say he clearly wanted to keep  
3 moving forward.

4 MR. COLANGELO: Let's mark as 21  
5 Document 3983.

6 (Plaintiffs' Exhibit 21, email, was  
7 marked.)

8 THE WITNESS: Thank you very much.

9 BY MR. COLANGELO:

10 Q Do you have Exhibit 21 in front of you?

11 A Yes.

12 Q Okay. And this is an email from you to  
13 the Secretary passing along the draft memo on the  
14 citizenship question?

15 A Correct.

16 Q Okay. And you'll see that Wendy Teramoto  
17 responded a few days later saying, "Peter Davidson  
18 and Karen Dunn Kelley will both be here Monday.  
19 Let's spend 15 minutes together and sort this  
20 out."

21 A Right.

22 Q And who is Peter Davidson?

1           A     He is the Department of Commerce general  
2     counsel who was arriving about that time, so --

3           Q     Who is Karen Dunn Kelley?

4           A     She is -- well, she would have been  
5     coming in as the Under Secretary for economic and  
6     statistics or whatever the name of the bureau is.  
7     So she would have been arriving about that time,  
8     as well. She -- I think they got confirmed around  
9     the same time.

10          Q     And this is the transmittal of the memo  
11     that you described in the earlier emails we talked  
12     about that you and OGC were preparing on the  
13     citizenship question for the Secretary?

14          A     That's [sic] appears to be what it is  
15     referencing, but I don't have the draft memo so I  
16     can't tell you for sure.

17               MR. COLANGELO: Okay. Let's mark as  
18     Exhibit 22 Document 1411.

19               (Plaintiffs' Exhibit 22, Email, was  
20     marked.)

21     BY MR. COLANGELO:

22          Q     Do you have Exhibit 22 in front of you?

1           A     I do. I'm reading it.

2           Q     Do you need a moment to look it over?

3           A     Yeah.

4                 Okay.

5           Q     Okay. And have you seen this document  
6 before?

7           A     Again, I sent the email, so yes.

8           Q     And can you tell me what this document  
9 reflects?

10          A     It reflects an email exchange about  
11 setting up a meeting.

12          Q     Okay. And this was a meeting on the  
13 citizenship question, right?

14          A     This was a meeting on key legal  
15 questions.

16          Q     Regarding the census?

17          A     It actually -- well, the subject matter  
18 is census, so presumably.

19          Q     And it involves you, Ms. Teramoto,  
20 Mr. Hernandez, Mr. Uthmeier, Ms. Davidson,  
21 Ms. Kelley, correct?

22          A     That's the list, yes.

1           Q     And we just saw an email from a few weeks  
2 earlier where Ms. Teramoto says let's keep  
3 Mr. Davidson and Ms. Kelley involved in a  
4 conversation about this, right?

5           A     I wouldn't say keep, but --

6           Q     Introduce them to this conversation?

7           A     Introduce, yes.

8           Q     So to your understanding, this was a  
9 meeting to discuss the citizenship question?

10          A     Again, my understanding of this was to  
11 discuss key legal issues regarding the census.

12          Q     Do you remember this meeting?

13          A     Not specifically, no.

14          Q     Do you remember any meetings with the  
15 Secretary and with this group on the census?

16          A     Again, not specifically, no.

17               MR. COLANGELO:   Okay.   Let's have this  
18 marked as Exhibit 23.   It's Document 2424.

19               (Plaintiffs' Exhibit 23, Email, was  
20 marked.)

21       BY MR. COLANGELO:

22          Q     Do you have Exhibit 23 in front of you,

1 Mr. Comstock?

2 A I do.

3 Q And do you recognize this document?

4 A Again, it's an email from the Secretary  
5 to me, so presumably I saw it then. There's a lot  
6 blanked out.

7 Q And you understand that the  
8 Justice Department has applied those redactions,  
9 correct?

10 A I do.

11 Q And in this email dated September 1,  
12 2017, the Secretary says, "I have received no  
13 update, nor has there been an updated," -- blocked  
14 out -- "nor the issue of the census question, nor  
15 whether KDB thinks we have our arms around the  
16 census cost data."

17 Do you see that?

18 A Yes.

19 Q And by KDB, do you think he meant KDK?

20 A I believe that would be who he would be  
21 referring to, yes.

22 Q Referring to Karen Dunn Kelley?

1           A     Yes.

2           Q     And did you understand this to be a  
3     request for information on the status of the  
4     citizenship question?

5           A     Well, I understood this to be a request  
6     for information on a whole series of information  
7     that were presented in the census.

8           Q     Including the citizenship question?

9           A     Including the citizenship. He mentions  
10    that.

11          Q     And the Secretary is frustrated, right?

12          A     That would appear so, yes.

13          Q     He's frustrated because he's asked for it  
14    repeatedly and hasn't seen anything yet telling  
15    him that it's done; is that right?

16          A     Well, I would not agree with your  
17    characterization. I think what this memo -- this  
18    email shows is that there were a tremendous number  
19    of issues connected to Census. At this time, we  
20    were working a tremendous amount on the lifecycle  
21    cost estimate.

22                So we -- I mean, we had a huge issue.

1 They were \$3 billion -- basically, 25 percent of  
2 their budget off, which is a shocking figure --

3 Q Does the Secretary --

4 MR. GARDNER: Let him finish his answer.

5 THE WITNESS: -- that does not inspire  
6 confidence in the Census Bureau or its current  
7 leadership at the time. So we were dealing with  
8 quite a few issues connected with Census,  
9 primarily related to the budget, trying to find  
10 people to run the Census that we could count on.

11 So, yes, citizenship was one small piece  
12 of this, but it was by no means the driving piece.

13 Q Thank you.

14 MR. COLANGELO: Let's mark Document 2034  
15 as Exhibit 24.

16 (Plaintiffs' Exhibit 24, Email, was  
17 marked.)

18 BY MR. COLANGELO:

19 Q Mr. Comstock, do you have Exhibit 24 with  
20 you?

21 A I do.

22 Q Have you seen this email before?

1           A     Again, it's an email from me to Peter  
2     and -- Davidson and James Uthmeier, it looks like,  
3     yes.

4           Q     And when's the last time you saw this  
5     email before today?

6           A     Probably when I sent it on September 7,  
7     2017.

8           Q     And you are advising Peter and James,  
9     quote, as I discussed with James a little while  
10    ago, the Secretary would like an update on  
11    progress since the discussion yesterday regarding  
12    the citizenship question.

13          A     That's what it says.

14          Q     And do you recall the discussion the day  
15    before with the Secretary regarding the  
16    citizenship question?

17          A     I don't recall the specifics of that  
18    discussion, no.

19          Q     There was a discussion on September 6th  
20    regarding the citizenship question?

21               MR. GARDNER:  Objection.  Form.

22               THE WITNESS:  Again, based on the email,

1 it appears there might have been.

2 BY MR. COLANGELO:

3 Q And why would the Secretary have asked  
4 for an update by the next day?

5 MR. GARDNER: Objection. Calls for  
6 speculation.

7 THE WITNESS: As I've mentioned before,  
8 we like to get things done. We're not here to do  
9 this all year long. So I was asked similar  
10 questions on numerous other issues I was working  
11 on.

12 BY MR. COLANGELO:

13 Q But it's fair to say the Secretary wanted  
14 an answer quickly?

15 A He always wants an answer quickly.

16 MR. COLANGELO: Let's mark Document 2395  
17 as Exhibit 25.

18 (Plaintiffs' Exhibit 25, Email, was  
19 marked.)

20 BY MR. COLANGELO:

21 Q Mr. Comstock, do you have Exhibit 25?

22 A I do.

1 Q Okay. Have you seen this document  
2 before?

3 A Yes.

4 Q When's the last time you saw it before  
5 today?

6 A Yesterday counsel pointed it out to me.

7 Q And did you review a version yesterday  
8 that was redacted like this or unredacted?

9 A I did.

10 Q Pardon me?

11 A It was redacted.

12 Q Okay. Like this?

13 A Exactly like this.

14 Q And this is an email from Mr. Uthmeier to  
15 you on the evening of September 7th saying, "Earl,  
16 I touched base with Peter," redacted, "He spoke  
17 with Kassinger this evening."

18 Do you see that?

19 A Yes.

20 Q Who is Kassinger?

21 A That would be Ted Kassinger, former  
22 general counsel for the Department of Commerce.

1 Q And where does Mr. Kassinger work now?

2 A He works at O'Melveny & Myers.

3 Q A law firm?

4 A Correct.

5 Q In Washington?

6 A Yes.

7 Q And what did Mr. Davidson and  
8 Mr. Kassinger discuss?

9 MR. GARDNER: Objection -- sorry.

10 Restate that one more time.

11 BY MR. COLANGELO:

12 Q What did Mr. Davidson and Mr. Kassinger  
13 discuss?

14 A I don't know.

15 Q Did Mr. Davidson tell you what he and  
16 Mr. Kassinger discussed?

17 A Not to my knowledge.

18 Q Did Mr. Uthmeier tell you what he and  
19 Mr. Kass- -- what Mr. Davidson and Mr. Kassinger  
20 discussed?

21 A Well, it appears he might have, but it's  
22 blanked out.

1           Q    And Mr. Kassinger doesn't work for the  
2 government, correct?

3           A    Correct.

4           Q    And did not at the time, correct?

5           A    Correct.

6                   I would just observe, based on the all  
7 blanked out here, we really have no idea what this  
8 email is referring to. It says a Census matter,  
9 but it could have been any number of things,  
10 including the numerous budget issues we were  
11 talking about. So let's make clear I don't know  
12 what this email was in reference to.

13          Q    Okay. Let's take a look at Exhibit 24.

14          A    Uh-huh.

15          Q    So this appears to be an unredacted  
16 version --

17          A    Of the last part.

18          Q    -- of the last part --

19          A    Right.

20          Q    -- which appears to be redacted on 2396;  
21 is that correct?

22          A    That certainly seems to be the case, yes.

1           Q    They're both dated the same date,  
2   correct?

3           A    Same date, same time.

4           Q    So --

5           A    Just to be precise.

6           Q    Thank you. Same date and same time, to  
7   be precise.

8                    So on an email chain that you commenced  
9   by saying the Secretary would like an update on  
10   progress since the discussion yesterday regarding  
11   the citizenship question. Is it your  
12   understanding that the reference to the Census  
13   matter in the subject line, in fact, refers to the  
14   citizenship question?

15          A    That would appear to be the case.

16          Q    Okay. So it would also be your  
17   conclusion that Mr. Davidson and Mr. Kassinger  
18   were talking about the citizenship question; is  
19   that right?

20          A    No. It would not.

21          Q    Why not?

22          A    Because I get lots of email that start on

1 one chain that go to another matter. So it's  
2 possible, but it's also possible it was discussing  
3 something else.

4 Q And did the general counsel talk to  
5 Mr. Kassinger about a lot of issues you were  
6 updated on?

7 A I have no idea what Mr. Davidson and  
8 Mr. Kassinger discussed.

9 Q Do you see the email below the Kassinger  
10 reference?

11 A Uh-huh.

12 Q There's a message from you to  
13 Mr. Davidson, Mr. Uthmeier and Ms. Teramoto that  
14 says, "I suggest setting up a call for tomorrow.  
15 The Secretary is asking for progress on this."

16 A Correct.

17 Q And that's a reference to the citizenship  
18 question, correct?

19 A Without seeing the blanked out matter  
20 below that from Peter Davidson, I don't know if  
21 the email chain switched subjects or not.

22 Q Okay. So your -- your testimony is that

1 even though you emailed Mr. Davidson and  
2 Mr. Uthmeier about the citizenship question, and  
3 they email you within an hour, and then you said  
4 the Secretary is asking for progress on this,  
5 you're not prepared to say it was about  
6 citizenship question?

7 A Without seeing the redacted material, I  
8 can't confirm whether it's about the citizenship  
9 question or whether we switched gears to another  
10 topic. That happens frequently.

11 Q Were there a lot of -- strike that.

12 And the next day is the day that you sent  
13 the Secretary your memo on DOJ contacts; is that  
14 correct?

15 It's Exhibit 15, if that helps.

16 A Yes. The next day I sent him on my  
17 discussions DOJ.

18 Q And so the Secretary was asking for  
19 updates on the citizenship question, you prepared  
20 a memo on your contacts with DOJ, and you asked  
21 the general counsel's office to prepare their own  
22 data; is that right?

1           A     Again, I think -- I would agree that I  
2     sent an email on the 7th asking for an update on  
3     progress regarding the citizenship question, and I  
4     would agree that I sent a memo to the Secretary  
5     updating him on who I had spoken to at Justice.  
6     But that's all I would know about what the  
7     substance of the conversations were.

8           Q     And then after that exchange, did there  
9     come a time when the Secretary and Attorney  
10    General spoke about this issue?

11          A     Correct.

12          Q     And about how long after was that?

13          A     I don't recall.

14          Q     Was it about a week after?

15          A     Possibly. I would imagine it was on the  
16    Secretary's calendar.

17          Q     And after the Secretary spoke with the  
18    Attorney General, was the substance of that  
19    conversation relayed to you?

20          A     Beyond -- beyond the fact that they had  
21    spoken and that the Attorney General was going to  
22    look into the matter, no.

1           Q     Beyond that they had spoken and the  
2     Attorney General would look into it --

3           A     Correct.

4           Q     -- nothing else was conveyed to you?

5           A     Right.

6           Q     This was an issue you had been working on  
7     for eight, nine months at this point?

8           A     Along with about 60 other issues.

9           Q     But this was one issue that you'd been  
10    working on for eight or nine months, correct?

11          A     Let's see, September -- no. I had not  
12    been working on it for eight or nine months.  
13    That's an overcharacterization. I'd been working  
14    on it for no more than seven months.

15          Q     Since very shortly after the Secretary  
16    was confirmed, correct?

17          A     Correct.

18               MR. COLANGELO: And let's mark as  
19    Exhibit 26 document stamped 2651.

20               (Plaintiffs' Exhibit 26, Email, was  
21    marked.)

22    BY MR. COLANGELO:

1 Q You have 2651 in front of you?

2 A I do. I'm reading it.

3 Okay.

4 Q Have you seen this email before?

5 A No.

6 Q Do you see on the first page the email  
7 from Danielle Cutrona, Wendy Teramoto dated  
8 September 17, 2017 at 12:10 p.m.?

9 A Yes.

10 Q Do you know who Danielle Cutrona is?

11 A I don't.

12 Q Do you know what OAG stands for?

13 A Office of the Attorney General.

14 Q Okay. So is your understanding that  
15 Danielle Cutrona, as of September 17, 2017, worked  
16 in the Office of Attorney General?

17 MR. GARDNER: Objection. Lack of  
18 foundation.

19 THE WITNESS: Again, based on the email,  
20 that would appear to be the case.

21 BY MR. COLANGELO:

22 Q Okay. And Ms. Cutrona says to

1 Ms. Teramoto, quote, from what John told me, it  
2 sounds like we can do whatever you-all need us to  
3 do, and the delay was due to a miscommunication.

4 Do you see that?

5 A I see that.

6 Q And then Ms. Teramoto writes back, "They  
7 connected. Thanks for the help. Wendy."

8 Do you see that?

9 A I see that.

10 Q And you mentioned that you got an update  
11 after this call. Who did you get that update  
12 from?

13 A I said I think the Secretary mentioned  
14 they had a discussion and the Attorney General was  
15 looking into it.

16 Q Well, this email doesn't say the Attorney  
17 General was looking into it. It says, "We can do  
18 whatever you-all need us to do and the delay was  
19 due to a miscommunication. The AG is eager to  
20 assist."

21 A That is what the email says. That is not  
22 what was communicated to me, so --

1           Q     So the Secretary said to you the AG will  
2 look into it?

3           A     I don't recall the exact words, but the  
4 AG is looking into the matter.

5           Q     When did the Secretary describe to you  
6 the conversation with the Attorney General?

7           A     I have no idea. Some time in this time  
8 frame.

9           Q     And what did he say when conveying the  
10 substance of the call to you?

11          A     I already relayed that. He said  
12 something to the effect of the AG is working on  
13 it.

14          Q     Okay. So this was in September of 2017.  
15 At some subsequent point, did the acting director  
16 of the Census Bureau receive a memo from the  
17 Justice Department requesting inclusion of a  
18 citizenship question?

19          A     Acting director receive a memo? I'm not  
20 aware of a memo. I think -- I think there was a  
21 letter that was sent.

22          Q     Okay. And do you remember the date of

1     that letter?

2           A     I don't.

3           Q     Have you seen that letter?

4           A     I believe I saw a letter from the  
5     Justice Department.

6           Q     It came in around December of 2017, does  
7     that sound right?

8           A     That sounds like the right ballpark.

9           Q     Did you see that letter before it was  
10    transmitted to Mr. Jarmin -- to Dr. Jarmin?  
11    Sorry.

12          A     I had not, no.

13          Q     And did you know the date that that  
14    letter was going to be transmitted before it was  
15    transmitted?

16          A     I did not, no.

17          Q     And did you read the letter when it came  
18    in?

19          A     I imagine I did.

20          Q     And did you discuss that letter with the  
21    Secretary when it came in?

22          A     I -- I might well have. I don't know.

1           Q    Okay.  What did you say to the Secretary  
2   about the December 2017 letter when it came in?

3           A    Justice Department has requested this, so  
4   now we can start the formal process.

5           Q    And what formal process are you referring  
6   to?

7           A    Well, as I've outlined before, in order  
8   for the government to take an action, you have to,  
9   basically, create a record and make your decision  
10   on the basis of that record.  So without a request  
11   from an agency to ask for the inclusion of  
12   citizenship, you were -- this was, basically, a  
13   hypothetical question.

14          Q    Okay.  But you had told the Secretary in  
15   May, we will get the Justice Department to request  
16   the question?

17          A    I am going to do everything I can to  
18   carry out the Secretary's wishes, if they are  
19   legal, and so I will do my best.  I can't promise  
20   things.

21          Q    You mentioned in reference to your  
22   May 2nd email that you'd identified a case or

1 cases supporting the --

2 A Right.

3 Q -- need for a citizenship question?

4 A Correct.

5 Q Is that case the Evanwell decision?

6 A I have no idea.

7 MR. COLANGELO: Give me one second,  
8 Counsel.

9 MR. GARDNER: Sure.

10 MR. COLANGELO: I think I'm done, so we  
11 will hand over to other counsel.

12 Do you want a short break, David, to do  
13 that?

14 MR. GERSCH: I could do some questioning  
15 before we break and then we can break.

16 MR. COLANGELO: Sure.

17 Let's go off the record.

18 VIDEOGRAPHER: Going off the record. The  
19 time on the video is 1:49 p.m.

20 (Off the record.)

21 VIDEOGRAPHER: We're back on the record.  
22 The time on the video is 1:50 p.m.

1 EXAMINATION BY MR. GERSCH:

2 Q Good afternoon, Mr. Comstock. My name is  
3 David Gersch, and I represent the New York  
4 Immigration Coalition plaintiffs.

5 A Okay.

6 Q And I'm going to ask you some questions.

7 A Sounds fine.

8 Q All right. At some point in March, the  
9 Secretary -- and when I secretary, you'll  
10 understand I mean Secretary Ross?

11 A Yes.

12 Q At some point in March, the Secretary  
13 issues what's called a decisional memorandum  
14 explaining his decision to add a question  
15 regarding citizenship to the census?

16 A You're referring to March 2018?

17 Q I'm sorry?

18 A You're referring to March 2018, not 2017?

19 Q I'm referring to March 26th.

20 A Right. In the year 2018 --

21 Q Correct.

22 A -- not the year 2017.

1 Q Ah. If I said --

2 A The prior questions were very focused on  
3 March 2017, so I want to be clear we're now  
4 talking about the following year.

5 Q Absolutely. Sorry. Yes. These  
6 questions -- the question I'm going to ask you now  
7 is about 2018.

8 You recall there was a time,  
9 March 26, 2018, when the Secretary issued a  
10 decisional memorandum regarding his decision to  
11 add a citizenship question?

12 A Yes.

13 Q You worked on that memorandum?

14 A Yes.

15 Q Okay. Were you the principal drafter?

16 A I was one of the principal drafters.

17 Q Who were the other principal drafters?

18 A James Uthmeier was the primary other  
19 drafter.

20 Q Did you have a division of responsibility  
21 between the two of you?

22 A No. I believe he did the first draft.

1 Q He did the first draft?

2 A Well, the Secretary actually probably  
3 made -- indicated what he wanted in a draft and  
4 then James would have put it together.

5 Q And then you would have worked on it  
6 after James?

7 A Correct.

8 Q All right. Was that a typical way in  
9 which the two of you worked?

10 A Sure. I edit lots of documents.

11 Q I mean --

12 (Thereupon, the court reporter  
13 clarified.)

14 THE WITNESS: I edit lot of documents.

15 BY MR. COLANGELO:

16 Q I meant with you and Mr. Uthmeier?

17 A Yeah. It would be unusual for me to  
18 prepare the first draft and him to edit it, yes.

19 Q That's what I'm getting at. All right.  
20 Thank you.

21 And did anyone else work on the draft  
22 besides you, the Secretary and Mr. Uthmeier?

1           A     Yes.  I think numerous other people  
2     reviewed the draft, and --

3           Q     How about people who contributed to the  
4     language?

5           A     Again, without seeing various drafts, it  
6     would be hard to say who contributed to which  
7     language.

8           Q     Okay.  Okay.  Couple more questions  
9     before we take our break.

10                  You were shown earlier today a supplement  
11     to the decisional memorandum --

12           A     Yes.

13           Q     -- issued by Secretary Ross in June of  
14     this year.

15                  You recall that?

16           A     Right.  You're referring to Exhibit 5?

17           Q     Yes.  And there's language in  
18     Exhibit 5 -- get the exact language -- there's  
19     language in Exhibit 5 that says referring to  
20     fundamental issues regarding the upcoming 2020  
21     census, "part of these considerations included  
22     whether to reinstate a citizenship question which

1 other senior administration officials had  
2 previously raised."

3 Was that language in the original memo  
4 you received -- original versions of this memo you  
5 received from the Department of Justice?

6 A I have no idea.

7 Q Did you add that language?

8 A No.

9 Q Do you have any idea who put that  
10 language in there?

11 A I don't.

12 Q Who at the Department of Justice  
13 recommended that the Secretary sign this memo  
14 memorandum?

15 A I don't know exactly. I mean, I was  
16 told --

17 Q Who were you dealing with at the  
18 Department of Justice?

19 A Well, I wasn't dealing directly with  
20 them. It was the Office of General Counsel at  
21 Department of Commerce that was dealing with them.

22 Q All right. If I understood your

1 testimony this morning -- and correct me if I'm  
2 wrong -- you received a draft from  
3 Department of Justice and you made edits to it; is  
4 that right?

5 A Well, Department of Commerce received the  
6 draft, which I made some edits to.

7 Q Who did you receive the document from?

8 A I would have either gotten it from James  
9 Uthmeier or Mike Walsh.

10 Q And is it your testimony you don't know  
11 who at Department of Justice were -- well,  
12 withdrawn.

13 You made recommendation to the Secretary  
14 that he sign the memorandum, correct?

15 A Based on the advice I'd been given by the  
16 Office of General Counsel, yes.

17 Q This morning I understood you to testify  
18 that it was based on the advice from the  
19 Department of Justice. Do --

20 MR. GARDNER: Objection.

21 BY MR. GERSCH:

22 Q -- you recall that testimony?

1 MR. GARDNER: Objection.  
2 Mischaracterizes the witness's previous testimony.

3 THE WITNESS: My previous testimony was  
4 the Department of Justice sent to the  
5 Department of Commerce, from the Justice  
6 Department to the Office of General Counsel, a  
7 draft document suggesting that the Secretary  
8 needed to sign this. That document was reviewed  
9 by the Office of General Counsel and myself, edits  
10 were made, the document produced, and the  
11 Secretary then signed it.

12 BY MR. GERSCH:

13 Q Yeah. My question was a little  
14 different.

15 My understanding of your testimony this  
16 morning was you recommended that the Secretary  
17 sign this supplemental memorandum based on advice  
18 you received from the Department of Justice; is  
19 that correct?

20 MR. GARDNER: Objection.  
21 Mischaracterizes the witness's previous testimony.

22 THE WITNESS: Once again, the

1 Department of Justice, who are our counsel,  
2 suggested that a supplemental memorandum was  
3 needed. This was not something Department of  
4 Commerce generated. This was something the  
5 Department of Justice, as our counsel, recommended  
6 be provided. Following up on that advice, we  
7 worked on the document and then had the Secretary  
8 sign it. We were following advice of counsel.

9 BY MR. GERSCH:

10 Q Well, again, I'm not sure I've got an  
11 answer to my question.

12 My understanding -- well, I'll put it --  
13 without respect to what you testified to this  
14 morning, is it correct that you advised the  
15 Secretary to sign the supplemental memorandum  
16 based, in part, on advice from the  
17 Department of Justice?

18 A Again, I'm not sure I'm following the  
19 logic of your question. But, once again, this  
20 document was produced initially by the  
21 Department of Justice, who sent it to the  
22 Department of Commerce with the recommendation

1     that the Secretary, for purposes of this  
2     litigation, needed to submit this supplemental  
3     memorandum.

4             So we reviewed it, made a few edits, and  
5     then we had the Secretary sign it. We were  
6     following the advice of our counsel. I'm not sure  
7     which part of that answer you're not following.

8             Q     I just asked whether part of the basis  
9     for your advice to the Secretary to sign it was  
10    the advice you got from the Department of Justice?

11            A     Obviously.

12            Q     Thank you.

13                 Did you talk to the Department of Justice  
14    about why it was a good idea for the Secretary to  
15    sign this memorandum?

16            A     No.

17            Q     Did anyone?

18            A     You'd have to ask our Office of General  
19    Counsel.

20            Q     And it's your testimony that you had no  
21    dealings with the Department of Justice about this  
22    memorandum?

1           A     That's correct.

2           Q     Okay.

3                 MR. GERSCH:  Let's take our short break  
4     here.

5                 MR. GARDNER:  How long?

6                 MR. GERSCH:  Ten minutes or so.

7                 VIDEOGRAPHER:  This is the end of Media  
8     Unit Number 4.  The time on the video is 1:58 p.m.  
9     We are off the record.

10                (Off the record.)

11                VIDEOGRAPHER:  This begins Media Unit 4.  
12     The time on the video is 2:14 p.m.  We are on the  
13     record.

14     BY MR. GERSCH:

15           Q     Mr. Comstock, we're back on the record.  
16     Before the break, I was asking some questions  
17     about 2018.  Now I want to go back to 2017.

18           A     Okay.

19           Q     You with me?

20           A     I'm with you.

21           Q     All right.  I want to go back to the  
22     spring of 2017 when Secretary Ross requests the

1 inclusion of a citizenship question on the census.  
2 At that point in time, the Department of Justice  
3 had made no request to Commerce for the addition  
4 of a citizenship question, correct?

5 A That's correct.

6 Q And they certainly hadn't  
7 asked -- withdrawn.

8 The Department of Justice certainly  
9 hadn't asked Commerce to add a citizenship  
10 question because of the VRA. That's also correct;  
11 isn't it?

12 A Well, they didn't ask us to add a  
13 citizenship question at that point. So  
14 speculating as to why they would ask is  
15 irrelevant.

16 Q I'm not asking you to speculate. The one  
17 thing we can be sure of is they didn't ask about  
18 the VRA is because they didn't ask at all?

19 A Correct.

20 Q All right. And when Secretary Ross says  
21 to you in the spring, in whatever words he used,  
22 that he wants a citizenship question added to the

1 census, wouldn't you have had a discussion with  
2 him at the time about why he wants that?

3 MR. GARDNER: Objection. Asked and  
4 answered.

5 THE WITNESS: Again, the answer is no, I  
6 would not have a discussion. My boss, if he asked  
7 me to investigate something, I investigate it and  
8 report back the results.

9 BY MR. GERSCH:

10 Q Is your testimony you did not have a  
11 discussion?

12 A I did not.

13 Q And you're not saying -- well, withdrawn.  
14 Wouldn't it be helpful to you in your job  
15 to assist the Secretary to have an understanding  
16 of why he wanted the citizenship question?

17 MR. GARDNER: Objection. Form.

18 BY MR. GERSCH:

19 Q You can answer.

20 A Again, I didn't have any particular  
21 doubts about why a citizenship question would be  
22 useful, so, no, it would not have hurt me to ask.

1           Q    I'm not asking whether you had doubts.  
2   My question to you is a little bit --

3           A    I understand your question.

4           Q    My question, sir, is:  Wouldn't it be  
5   helpful to you in your job of assisting the  
6   Secretary to have a complete understanding of why  
7   the Secretary wants to add a citizenship question?

8           MR. GARDNER:  Objection.  Form.

9           THE WITNESS:  Again, it's not relevant to  
10   the question of whether or not he needs -- of  
11   whether or not a question should be added, so, no.

12   BY MR. GERSCH:

13          Q    Is it your testimony that why he wants a  
14   citizenship question to be added is not relevant  
15   to whether it should be added?  Did I -- did I  
16   hear that right?

17          MR. GARDNER:  Objection.  
18   Mischaracterizes the witness's prior testimony.

19          THE WITNESS:  My test- --

20          MR. COLANGELO:  That's exactly what he  
21   said, Counsel.

22          THE WITNESS:  No.  My testimony is:  The

1     rationale for why he would want it added is not  
2     relevant to my initial inquiry as to whether or  
3     not a question can be added.

4     BY MR. GERSCH:

5           Q     Yeah. My question was a little  
6     different. The question I am trying to get you to  
7     focus on is: In your work for the Secretary,  
8     wouldn't it be helpful to you to understand as  
9     fully as possible why he thinks it's a good idea  
10    to add a citizenship question?

11          A     And let --

12               MR. GARDNER: Objection. Asked and  
13     answered.

14               THE WITNESS: And let me get you to  
15     understand my answer, which is, no, it would not  
16     make a difference, because I don't need that  
17     information to investigate the question.

18     BY MR. GERSCH:

19           Q     Anyone ever say anything to you about why  
20     the Secretary thought it was a good  
21     idea -- withdrawn.

22               Am I right that your testimony is that

1 you've never had a discussion with the Secretary  
2 about why he thought it was a good idea to have a  
3 citizenship question added?

4 A That's correct. I have not had a  
5 conversation with him, no.

6 Q Okay. And did anyone else say anything  
7 to you about why the Secretary thought it was a  
8 good idea to have a citizenship question added?

9 MR. GARDNER: Objection. Form.

10 THE WITNESS: Again, no.

11 BY MR. GERSCH:

12 Q All right. If I remember correctly, you  
13 testified you worked in a bullpen area?

14 A Correct.

15 Q Outside the Secretary's office?

16 A Yes.

17 Q I'm not sure I've got all the people who  
18 were there, but Wendy Teramoto was there, right?

19 A Correct.

20 Q James Uthmeier was there?

21 A No.

22 Q I'm sorry.

1           You were there?

2           A     Yes.

3           Q     Eric Branstad, was he there?

4           A     Yes.

5           Q     That's three.

6                     Izzy Hernandez, that's four. Was he  
7 there?

8           A     Yes.

9           Q     Who was the fifth?

10          A     James Rockas.

11          Q     And I'm right that there were five?

12          A     Correct.

13          Q     Okay.

14          A     At times.

15          Q     So you're all sitting there -- and are --  
16 do you work in cubicles, open desks, how does it  
17 work?

18          A     Wendy Teramoto had a seated desk. I had  
19 a standing desk. Izzy had a standing desk with a  
20 stool. James had a standing desk with a stool.  
21 Eric Branstad had a standing desk with a stool.

22          Q     Are there walls? Are there partitions?

1 Are you all in an open space?

2 A I'm facing -- I was facing Wendy. Izzy,  
3 who was rarely there, but his desk was next to  
4 mine, facing Eric, and then James was on the end.

5 Q And there are no walls, correct?

6 A No walls.

7 Q No partitions?

8 A No partitions.

9 Q Okay. In all the time that you're  
10 sitting there and you're all working together, no  
11 one says, why does the Secretary want to add a  
12 citizenship question -- citizenship question?

13 A That's correct. Because, again, this was  
14 one of well over 100 different items we were  
15 working on. All of us were working on different  
16 things. I'm primarily tasked with policy. James  
17 is primarily tasked with press. And so you're  
18 dealing with all of these other issues. There's  
19 no reason to discuss it.

20 Q I'm not even talking about discussing it.  
21 No one mentioned? Did anyone mention it?

22 A Not that I recall.

1           Q    No one says the reason the Secretary  
2           wants to add a citizenship question is whatever  
3           the reason is, no one ever said anything like  
4           that?

5           A    No.

6                   MR. GARDNER:  Objection to form.

7                   THE WITNESS:  Not to my recollection.

8           BY MR. GERSCH:

9           Q    Okay.  Did you ever have a discussion  
10           with people from the Office of General Counsel at  
11           Commerce about why the Secretary wanted to add a  
12           citizenship question?

13           A    No.

14           Q    And in your time there, did you never see  
15           a document analyzing why it was a good idea for  
16           Census to add a citizenship question?

17           A    Again, you're -- we have a fundamental  
18           disagreement on the premises of your question.  
19           Your premise is that somehow a reason needs to be  
20           provided.  The question before us is the Secretary  
21           has the legal authority to add questions to the  
22           census.  Is there a governmental need?  And if

1       there is, then you're off to the races.

2           Q     My question was a little different.   My  
3       question was --

4           A     I understand your question.

5           Q     Sir, I'll repeat it for you.

6                   My question is:  In all the time you're  
7       there, did you never see a document spelling out  
8       the reasons why it would be a good idea to add a  
9       citizenship question?  Why it would be good from  
10      Commerce's perspective?

11                  MR. GARDNER:  Objection.  Form.

12                  THE WITNESS:  Again, that's not the  
13      question.  Commerce --

14      BY MR. GERSCH:

15           Q     Excuse me, sir.  That is my question.  
16      Could you answer my question?

17           A     Okay.  No.

18           Q     Not even a scrap of paper, right?

19           A     Nope.

20           Q     No memoranda, right?

21           A     No.

22           Q     No emails?

1           A     Not that I recall.

2           Q     And I just want to be straight on my  
3     understanding. I think I got you correctly, but I  
4     just want to make sure and test that I'm right.

5                 It couldn't possibly assist you in your  
6     work, in any way, to know why the Secretary wanted  
7     to add a citizenship question? Do I understand  
8     that correctly?

9           A     It's not relevant to my analysis.

10          Q     And so it couldn't possibly help you in  
11     any way in your work?

12          A     I'm not going to agree with your  
13     statement that way, no.

14          Q     Well, that's my question -- withdrawn.

15                 Well, is there any way in which knowing  
16     what the Secretary's reason was for wanting to add  
17     a citizenship question, is there any way that  
18     could assist you in your work at  
19     Department of Commerce?

20          A     Assist me on my work at the Department of  
21     Commerce, no.

22          Q     Is there any way that it could help you

1 help the Secretary add a citizenship question?

2 A If I had found it difficult or  
3 challenging, yes. Knowing more about why he  
4 wanted it would have been helpful, but I didn't  
5 say that there was an issue. It had been asked  
6 for hundreds of years, and it had been asked on  
7 the ACS. So, clearly, there's a need for it. And  
8 so, no, that was not a particularly troublesome  
9 aspect of the question I was being asked to look  
10 into.

11 Q When you said if I had found it difficult  
12 or challenging, what did you mean? What's the it?

13 A If -- if what I had been requested to do  
14 seemed to have significant legal obstacles to the  
15 ability to do that question or take that action,  
16 then I would probably inquire more fully to see if  
17 there's an alternative way to address what the  
18 Secretary is trying to get to. In this particular  
19 case, you have something that has been on the  
20 decennial census before that is currently being  
21 asked on the ACS. There's clear legal authority  
22 for him to add the question. So, frankly, the

1 reasons that he wants to add it doesn't add  
2 anything to the analysis. There is a governmental  
3 need for this information. That's a question  
4 that's already established, so I don't need to  
5 inquire further as to what his personal beliefs  
6 regarding this question might be.

7 Q What's the governmental need for the  
8 question?

9 A Enforcement to the Voting Rights Act,  
10 determining how many undocumented citizens there  
11 are. You name it, there's a whole bunch of  
12 reasons. That's why every government in the world  
13 collects this information.

14 Q Well, correct me if I'm wrong, we're  
15 talking about at a period in the spring of 2017  
16 when the Voting Rights Act hadn't come up, the  
17 Department of Justice hadn't made a request for  
18 it. What does the Voting Rights Act got to do  
19 with it in the spring of 2017?

20 A When you inquire as to what does the  
21 Department of Justice use the citizenship data  
22 on --

1           Q    That wasn't my question.  My question  
2   is --

3           A    I'm answering your --

4           Q    -- why is it a good idea, why does the  
5   government need it back in the spring of 2017?

6           A    Finished with your question?

7           Q    That's my question.

8           A    The answer is for the same reason they've  
9   been collecting it for the last 200-plus years.

10          Q    What's the government need in the spring  
11   of 2017?

12          A    I already answered that question.  If  
13   they collect the data under the ACS for Voting  
14   Rights Act enforcement, that is one of the primary  
15   reasons they collect the data.

16          Q    Okay.  It's on the ACS.  What's the  
17   need -- governmental need for it to be on the  
18   census?

19               MR. GARDNER:  Objection.  Asked and  
20   answered.

21               THE WITNESS:  The governmental need is,  
22   again, if you're going to get more detailed

1 information, then you need that information.

2 BY MR. GERSCH:

3 Q Who said in the spring of 2017 that the  
4 government needed more detailed information?

5 A Again, I'm presented with a request by  
6 the Secretary to say, can we add this question to  
7 the census? I inquire about that, and I looked at  
8 it. One of the reasons you would need it is  
9 voting rights. If you're going to do voting  
10 allocations on the basis of census allocations,  
11 that's the reason it's perfectly sufficient.

12 Q Who said that in the spring of 2017?

13 A That was -- that was determined after  
14 taking a quick look at the issue. I don't need  
15 more than that to continue to pursue the question.

16 Q Who told you that the government needed,  
17 in the spring of 2017, more detailed information  
18 about citizenship than was contained in the ACS?

19 A Nobody.

20 Q You came to that decision on your own; is  
21 that right?

22 A Correct.

1           Q    But you're not a voting rights lawyer,  
2   right?

3           A    Irrelevant to the question.

4           Q    That's not my question.  You're not a  
5   voting rights lawyer, right?

6           A    I've already said that.

7           Q    So you decided on your own in the spring  
8   of 2017 that it would be a good idea for the  
9   government to have more information than was  
10  available from the ACS about citizenship to  
11  enforce the Voting Rights Act, even though you're  
12  not a voting rights lawyer?

13          A    I don't agree with that characterization,  
14  at all.  I decided that there was sufficient  
15  information for me to pursue the Secretary's  
16  request to consider placing a citizenship question  
17  on the decennial census and that there was  
18  sufficient potential reason to collect that  
19  information to warrant moving forward.  If I'd  
20  come to an opposite conclusion that there was not  
21  sufficient potential reason or that there was some  
22  insurmountable legal bar, then I would have

1 reported back to the Secretary, I'm sorry,  
2 Mr. Secretary, it does not appear we can  
3 accomplish this objective.

4 Q Why did you need to come up with a reason  
5 for asking the question, separate and apart from  
6 whatever reason the Secretary had in his own head?

7 A Again, my job is to figure out how to  
8 carry out what my boss asks me to do. So you go  
9 forward and you find a legal rationale. Doesn't  
10 matter what his particular personal perspective is  
11 on it. It's not -- it's not going to be the basis  
12 on which a decision is made.

13 Q That's your understanding, that the way  
14 you should do it, is come up with a rationale that  
15 has nothing to do with what's in the Secretary's  
16 mind as to why he wants it; is that your  
17 understanding of how it's supposed to work?

18 A No. Again, you continue to characterize  
19 things in a way that you believe may be correct,  
20 but not the way I believe to be correct. My job,  
21 as a person who has been doing this for 30-plus  
22 years for clients and people in the government, is

1 if they would like to accomplish an objective, I  
2 see if there's a way to do that. And, again, if  
3 it's not legal, you tell them that. If it can't  
4 be done, you tell them that. If there's a way to  
5 do it, then you help them find the best rationale  
6 to do it. That's what a policy person does.

7 And so, again, if I came up with a  
8 rationale that the Secretary didn't agree with or  
9 didn't support, then he was going to tell me that.  
10 I have no doubt about that. But in the meantime,  
11 he doesn't -- I don't need to know what his  
12 rationale might be, because it may or may not be  
13 one that is -- that is something that's going to a  
14 legally-valid basis.

15 So, again, he's got -- he's asked, can we  
16 put -- can we put a question on? The job of a  
17 policy person is go out and find out how you do  
18 that. Whether that decision is going to be made  
19 ultimately to do it or not, that's up to the  
20 decision-maker.

21 Q Are you saying you're better off not  
22 knowing what the Secretary's own rationale is for

1     wanting the citizenship question?

2           A     The Secretary, as you would point out, is  
3     not a voting rights lawyer, so I would not expect  
4     him to necessarily come up with a rationale.  
5     That's the job of the staff at work.

6           Q     You certainly wouldn't expect the  
7     Secretary to have come up with the idea that the  
8     reason he should want the citizenship question is  
9     the Voting Rights Act; you wouldn't expect him to  
10    come up that on his own?

11          A     I -- he might well. I don't know.

12          Q     You have no reason to believe that he  
13    did, right?

14                MR. GARDNER: Objection. Calls for  
15    speculation.

16                THE WITNESS: I'm not going to speculate  
17    about what his rationale was. You'd have to --

18    BY MR. GERSCH:

19          Q     Because --

20          A     -- ask him.

21          Q     -- because you have no idea what his  
22    rationale is?

1           A     That's correct.

2           Q     Counsel asked you about contact you made  
3 with the Department of Justice --

4           A     Correct.

5           Q     -- starting with a Ms. Haney [sic], I  
6 believe.

7                     Do you recall that?

8           A     Yes. I believe her name is Hankey,  
9 but --

10          Q     Hankey. I apologize.

11                     What was the full name? I can get it out  
12 if you don't know it offhand.

13          A     Mary Blanche, but --

14          Q     I'll find it in here.

15          A     It's in one of these exhibits, the memo  
16 that I wrote. Here.

17          Q     Mary Blanche --

18          A     Yep.

19          Q     -- Hankey; is that right?

20          A     Yeah.

21          Q     All right. So you went -- you called  
22 Mary Blanche Hankey --

1 A Correct.

2 Q -- with regard to adding a citizenship  
3 question to the census, right?

4 A Correct.

5 Q And you wanted to see if the  
6 Department of Justice would sponsor the question?

7 A Correct.

8 Q And you had a phone call with her, and  
9 you had at least a meeting with her, right?

10 A Right.

11 Q So at least two contacts?

12 A Three, when she called me back with  
13 somebody else's name.

14 Q Fair enough.

15 Didn't -- didn't Ms. Hankey say, why do  
16 you want to have a citizenship question?

17 A No, she didn't.

18 Q Didn't come up, at all?

19 A Nope.

20 Q She referred you to a Mr. McHenry; is  
21 that right?

22 A Correct.

1 Q And he's not a voting rights guy, right?

2 A I don't actually know what his background  
3 is.

4 Q Well, you went ahead, back and forth with  
5 him over about a month; is that right?

6 A I mean, we spoke on the phone probably  
7 three or four times, yeah.

8 Q Going from, I think, the period you  
9 mentioned was --

10 A Yeah. It was --

11 Q -- early May to early June, roughly?

12 A Approximately a month, yeah.

13 Q And didn't you learn in that time that  
14 he's not a voting rights guy?

15 A No.

16 Q Never came up?

17 A We didn't get into great detail on the  
18 rationale.

19 Q You did ask him would you sponsor a  
20 census question for -- I'm sorry. Withdrawn.

21 You did ask Mr. McHenry if he would be  
22 willing to sponsor a request for the addition of a

1 citizenship question on the census, right?

2 A I didn't ask Mr. McHenry if he would. I  
3 asked if the Department of Justice would be  
4 inclined to send a letter asking us to add the  
5 citizenship question.

6 Q Fair enough.

7 And when you did that, you didn't explain  
8 to Mr. McHenry why the Secretary wanted a  
9 citizenship question?

10 A I would have no reason to.

11 Q And Mr. McHenry never asked, hey, you  
12 want me to do this? Why do you need it? He never  
13 asked you that?

14 A I think I explained at the outset that  
15 the department currently got a report from the ACS  
16 on citizenship level -- I mean, on  
17 census -- certain census size, Citizen Voting Age  
18 Population, and if they were to get it from the  
19 decennial, that would allow them a greater  
20 granularity and would that be useful to them, and  
21 he said he would inquire.

22 Q You asked Mr. McHenry if the

1 Department of Justice would find it useful to have  
2 more granularity about citizenship?

3 A Correct.

4 Q But at no point did Mr. McHenry say,  
5 look, if we want it, we'll ask for it, but how  
6 come you want it? Didn't he ask you something  
7 like that?

8 A No.

9 Q When people call you and say, hey, will  
10 the Department of Commerce do this or do that,  
11 don't you say, why do you want that, why do you  
12 need that?

13 A I usually say is there a reason that you  
14 think the Department of Commerce would need  
15 that -- and if they have a reason, then I'll look  
16 into it. I don't say, hey, why does your boss  
17 want this? That's not part of lexicon.

18 Q No. No. If another agency calls and  
19 says --

20 A I don't --

21 Q Let me finish the question and you can  
22 answer any way you want.

1           If another agency calls and says, will  
2     the Department of Commerce do such and such,  
3     whatever it is --

4           A     Right.

5           Q     -- don't you say to them in some form or  
6     another, why do you want this?

7           MR. GARDNER:  Objection.  Hypothetical.

8     BY MR. GERSCH:

9           Q     Why does your agency need this?

10          MR. GARDNER:  Objection.  Hypothetical.

11          THE WITNESS:  Again, I don't question why  
12     their boss might want it.  I might say, what is it  
13     you think we can provide or why do you think the  
14     Department of Commerce is the right agency for  
15     this?  But if they say we need this data because  
16     we're negotiating a trade agreement, whatever,  
17     that's fine.  I don't question their basis.

18     BY MR. GERSCH:

19          Q     Okay.  But if I understood your last  
20     answer, you added something important, you said,  
21     if they call and say we need this for the trade  
22     ag- -- trade agreement, you say I don't question

1       them. But if they don't give a reason, sir, don't  
2       you say to them, why do you want it?

3               MR. GARDNER: Objection. Calls for a  
4       hypothetical.

5               THE WITNESS: Again, I already provided  
6       the reason for Department of Justice. I said,  
7       would it be useful for you to have more granular  
8       voting data at the census lock level? He said he  
9       would inquire. That answers your question. I'd  
10      already provided the answer.

11      BY MR. GERSCH:

12             Q     Mr. McHenry comes back at some point and  
13       he says he's not interested, right, in words or  
14       substance?

15             A     He suggested that I contact the  
16       Department of Homeland Security.

17             Q     But I take it he makes it clear to you in  
18       some fashion -- withdrawn.

19             Let's start with this. What did he say  
20       to you?

21             A     He suggested I talk to the Department of  
22       Homeland Security.

1           Q     Did he also say, listen, I don't really  
2     need that information, or my guys don't need that  
3     information, or my department doesn't need that  
4     information or something like that?

5           MR. GARDNER:   Objection to form.

6           THE WITNESS:   Again, no, he did not  
7     indicate that they did not need the information.  
8     He simply suggested that they were rather busy and  
9     why don't I talk to the Department of  
10    Homeland Security.

11   BY MR. GERSCH:

12          Q     It's your testimony that he said they  
13    were too busy to do it?

14          A     Unfortunately, that's not an uncommon  
15    response from other agencies.  They don't  
16    necessarily look for extra work.

17          Q     Okay.  So they were too busy to ask for  
18    it, that's what you understood them to say?

19          A     Yeah.  Their inclination was they weren't  
20    inclined to do the work, to ask for it, yeah.

21          Q     Okay.  Okay.  So Mr. McHenry let's you  
22    know he's not inclined or the department is not

1 inclined to do the work, to ask for it, and he  
2 refers you to Homeland Security, correct?

3 A Correct.

4 Q And you speak to a Mr. Hamilton, right?

5 A Right.

6 Q And Mr. Hamilton, he's not a VRA guy,  
7 right?

8 A I have no idea what his background is.

9 Q Certainly, it's your understanding that  
10 the Department of Homeland Security has nothing to  
11 do with enforcing the Voting Rights Act?

12 A It would not normally be something I  
13 would think they would do, no.

14 Q And you talked to Mr. Hamilton how many  
15 times?

16 A I don't know, three or four times.

17 Q Over what period?

18 A Again, two weeks. I don't know.

19 Q And don't you say to Mr. Hamilton, here's  
20 why we want the information, here's why we want  
21 you to ask for the citizenship question?

22 A Again, it was the same explanation as I

1 gave the Department of Justice. And as you  
2 pointed out, DHS doesn't really do that. So I was  
3 simply following up on the suggestion that  
4 Mr. McHenry had made, and perhaps there was  
5 something that DHS did that I was unaware of that  
6 would have them -- have the need for this  
7 information. Turns out they didn't, so back to  
8 Square 1.

9 Q Yeah. My question is -- and maybe I  
10 didn't phrase it exactly right.

11 Did you explain to Mr. McHenry [sic] in  
12 any of these several calls, here's why it's  
13 important to the Department of Commerce, or your  
14 boss or whomever, here's why it's important  
15 that -- to get a citizenship question added?

16 MR. GARDNER: I think you mean  
17 Mr. Hamilton. You said Mr. McHenry.

18 MR. GERSCH: Withdrawn. Let me rephrase.  
19 Thank you, Counsel.

20 BY MR. GERSCH:

21 Q In any of these several calls, you say to  
22 Mr. Hamilton, here's why it's important to

1 Department of Commerce to have you folks request  
2 the addition of a citizenship question.

3 A No. I never explained that to him.

4 Q And is it your testimony that in your  
5 several conversations with Mr. Hamilton, he never  
6 says, hey, why do you want this?

7 A That's correct.

8 Q He never says, why do you want a  
9 citizenship question added?

10 A Again, when somebody calls up and says --  
11 my boss, you know, Secretary Ross, AG Sessions,  
12 whomever has asked us to pursue this, I don't  
13 typically question back and say, well, why do you  
14 think -- does your boss think this is needed? I  
15 just don't do that. It's kind of discourteous to  
16 other staff. So no, he took me at face value.  
17 I'm calling to inquire, would they find this  
18 useful? He gets back to me, no.

19 Q I just want to make sure I caught part of  
20 what you're saying correctly.

21 Are you saying it would have been  
22 discourteous for Mr. Hamilton at Homeland Security

1 to say, hey, why do you guys at Commerce want us  
2 to ask for a citizenship question?

3 A For him to challenge why my boss might  
4 ask for it.

5 Q I didn't say challenge.

6 Is it your testimony it would be  
7 discourteous for him to say, hey, you're asking me  
8 to do something --

9 A Uh-huh.

10 Q -- something which involves some work --

11 A Uh-huh.

12 Q -- would you just explain to me why it's  
13 important for you to have me ask for a citizenship  
14 question?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: No such conversation  
17 occurred.

18 BY MR. GERSCH:

19 Q Yeah. My question is: Would that have  
20 been discourteous for him to say that to you?

21 A Depends on how he phrased it.

22 Q He could have phrased it in a way that

1 was properly respectful, right?

2 A Theoretically, yes.

3 Q In the time that you were dealing with  
4 Mr. McHenry or getting ready to deal with  
5 Mr. McHenry -- this is back at the Justice  
6 Department now -- did you ever learn that he was  
7 director of the Executive Office of Immigration  
8 Review?

9 A I never learned that, no.

10 Q How about Ms. Hankey, did she say why she  
11 was going to refer you to Mr. McHenry?

12 A No, she didn't.

13 Q Is it common for you to call people like  
14 Mr. McHenry without knowing what their position  
15 is?

16 A Certainly at that time, yes.

17 Q What was it about that time?

18 A Well, it was shortly into the  
19 administration, and titles are not necessarily  
20 informative of what people do, so --

21 Q Did you have an understanding of what  
22 Mr. McHenry's portfolio was, independent of his

1 title?

2 A No.

3 Q About what his expertise was independent  
4 of his title?

5 A No.

6 Q You didn't know -- withdrawn.

7 You're trying to accomplish something for  
8 your boss, right?

9 A Correct.

10 Q And you're calling another agency and  
11 you're going to ask them to do some work, right?

12 A Right.

13 Q And you know from your vast experience  
14 that sometimes people just say no because they  
15 just don't want to do the work, right?

16 A Correct.

17 Q That's not uncommon, right?

18 A It's been my experience.

19 Q So in order to have the best possible  
20 chance of persuading a person like Mr. McHenry,  
21 don't you want to do a little research beforehand?

22 A Again, I was dealing with, literally,

1 hundreds of issue, as well as clearing  
2 correspondence, clearing Federal Register notices,  
3 no. I did not have time to research this guy's  
4 background. That's why I went through  
5 Eric Branstad to say, hey, get me somebody over at  
6 DOJ who I can talk to. I want to Hankey -- and I  
7 don't know her from Adam, but relying on the fact  
8 that she was recommended by folks over at the  
9 White House as somebody who was connected with  
10 AG Sessions, I'm assuming she's going to steer me  
11 in the right direction. So I take on faith who  
12 she suggested I talked to. Turned out they  
13 weren't the right person, so we didn't get  
14 anywhere.

15 Q Did you have an assistant during this  
16 period?

17 A No.

18 Q Any staff?

19 A I had my OPSP staff.

20 Q Who's that?

21 A Office of Policy and Strategic Planning.  
22 They were the detailees I discussed earlier.

1 Q Got it.

2 You couldn't ask one of them, hey, I'm  
3 supposed to have a call with Mr. McHenry, can one  
4 of you figure out what he is and why --

5 A No.

6 Q Excuse me. I got to -- just a second.  
7 I've got to finish the question. You can answer  
8 it any way you want.

9 Didn't you want to call -- talk to one of  
10 your staff people and say, listen, I got a call  
11 with Mr. McHenry, I got to persuade him to do some  
12 work he's not going to want to do, to help out our  
13 boss, Mr. Ross, Secretary Ross, and can one of  
14 your look up and tell me who he is and what levers  
15 we might be able to pull to persuade him to do  
16 this work for us?

17 MR. GARDNER: Objection.

18 BY MR. GERSCH:

19 Q You didn't want to ask someone on your  
20 staff to do some work like that for you?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: Again, that's a view of

1 both the workload I was under and the workload  
2 that they're under that I think is misinformed.

3 In fact, several of my calls with  
4 Mr. McHenry were made while I was driving into  
5 work, so there was no opportunity to call somebody  
6 and do that research.

7 And, besides, this wasn't about getting  
8 leverage on Mr. McHenry. This was simply to  
9 ask -- following up on the person I'd been  
10 directed to, who, based on the fact that it was  
11 recommended by an assistant to the AG, I'm  
12 assuming is going to at least be somewhat  
13 receptive. Probably an error on my part, but  
14 that's -- I've got a dozen other things I'm  
15 dealing with at the same time. So, no, I'm not  
16 going to spend a lot of time researching this guy.

17 BY MR. GERSCH:

18 Q You didn't spend any time researching  
19 this guy?

20 A Correct. I didn't.

21 Q Secretary Ross certainly knows why he  
22 wanted a citizenship question back in the spring

1 of 2017, right?

2 A You'd have to ask him.

3 Q Is there anyone besides Secretary Ross  
4 who we could go to who would have that  
5 information?

6 MR. GARDNER: Objection. Lack of  
7 foundation. Calls for speculation.

8 THE WITNESS: I'm not aware of anybody.

9 BY MR. GERSCH:

10 Q Do you have any reason to believe that  
11 Secretary Ross's rationale for wanting to add a  
12 citizenship question is some kind of supersecret?

13 A No.

14 Q Doesn't involve national security, right?

15 MR. GARDNER: Objection. Lack of  
16 foundation. Calls for speculation.

17 THE WITNESS: I don't know what the  
18 Secretary's rationale is. You'd have to ask him.

19 BY MR. GERSCH:

20 Q But you don't think it involves national  
21 security?

22 MR. GARDNER: Same objections.

1           THE WITNESS: I'm not going to speculate  
2     on that.

3     BY MR. GERSCH:

4           Q     You heard about this suit back when it  
5     was filed, right, this lawsuit?

6           A     Yeah.

7           Q     Okay. And there's several lawsuits,  
8     right?

9           A     Lost count, but yes.

10          Q     And you've known that you were going to  
11     sit for a deposition for a while, also?

12          A     Maybe for two weeks or so.

13          Q     Okay. Well, at any time since these  
14     lawsuits started to get filed, did you have a  
15     discussion with anyone about why it is the  
16     Secretary wanted a citizenship question added?

17          A     No.

18          Q     Secretary Ross gave Congressional  
19     testimony in March of 2018 in advance of his  
20     decisional memorandum. Do you remember that?

21          A     I'll take your word for it.

22          Q     Testified before committees of both --

1 both House, right?

2 A Again, I'd have to look at a calendar to  
3 refresh my memory as to when he testified. But,  
4 yes, he testified to Congress during the course of  
5 the year.

6 Q Fair enough.

7 And he was asked questions about a  
8 citizenship question?

9 A I believe that's correct.

10 Q Who prepared him to testify on that  
11 subject?

12 A He -- he does a lot of his own hearing  
13 prep, but we would have -- I would have been  
14 involved, as well as James Uthmeier,  
15 Peter Davidson, of course, Karen Dunn Kelley. I  
16 mean, this was not a hearing specifically on the  
17 citizenship question, so we mostly would have been  
18 preparing for the broad range of questions on  
19 whatever the topic was. We were going up and  
20 testifying on the steel tariffs. We were going up  
21 and testifying on the lifecycle cost estimate, a  
22 whole series of things, so --

1 Q Sure. You want to get him prepped on  
2 everything, though, right?

3 A Yeah.

4 Q And one of the things that you  
5 anticipated would come up was the question about  
6 the citizenship question, right?

7 A Seems reasonable if that was the time  
8 frame, yes.

9 Q And were you the one who worked with  
10 Secretary Ross on how he was going to answer those  
11 questions?

12 A I would have been one of the people, yes.

13 Q Was there a division of responsibility  
14 between the folks you mentioned just a minute ago,  
15 the people who helped prepare him?

16 A Not per se. I think he's fairly open to  
17 suggestions from staff of what to consider. So if  
18 somebody had an idea, he would consider it.

19 Q Did you tell the Secretary, listen, you  
20 can expect that someone is going to ask  
21 whether -- whether you're going to add a  
22 citizenship question? Did you have that

1 discussion with him? That would have been normal,  
2 right?

3 A Well, again, if this is in the time  
4 period after we received the DOJ letter and while  
5 he was considering making his decision, then, yes,  
6 we might have anticipated. But the answer would  
7 have been fairly straightforward, which is we have  
8 that matter under review, and I'm considering  
9 all -- all information. So there would have been  
10 very little we're prepping for on that.

11 Q Didn't you discuss with the  
12 Secretary -- withdrawn.

13 First of all, I'll represent that he  
14 did -- the Secretary did, in fact, testify before  
15 multiple committees after the  
16 Department of Justice request came in in December  
17 of 2017 and before the issuance of the March  
18 decisional memorandum.

19 A Okay.

20 Q And my question to you is: In those  
21 discussions that you had with the Secretary to  
22 prepare him, wasn't it discussed whether the

1 Secretary was going to reveal the reasons he had  
2 wanted to the addition of a citizenship question?

3 A No.

4 Q Subject never came up?

5 A Never came up.

6 Q Didn't it come up whether the Secretary  
7 would reveal that the reason that Commerce had  
8 received a request from DOJ to add a citizenship  
9 question is because Commerce had gone to DOJ and  
10 asked DOJ to make that request?

11 A No.

12 Q Never came up?

13 A Never came up.

14 (Conference call interruption.)

15 THE WITNESS: In case we were falling  
16 asleep.

17 BY MR. GERSCH:

18 Q You testified with respect to the  
19 citizenship question; isn't that right?

20 A That's correct.

21 Q You gave testimony before the House  
22 Committee on Oversight and Government Reform?

1 A Correct.

2 Q After the decisional memorandum was  
3 issued?

4 A Uh-huh.

5 Q May 8th of this year?

6 A Okay.

7 Q Sound right?

8 A Somewhere in that ballpark, yeah.

9 Q Yeah?

10 A I'll take your word for it on the date.

11 Q You were asked questions by  
12 Representative Eleanor Holmes Norton about  
13 citizenship questions. Do you remember?

14 A I recall the exchange, yes.

15 Q She asked why did this question, which  
16 was dropped for 70 years, suddenly appear on the  
17 decennial census, what was the point, didn't she?

18 A I -- I would have to refer to her  
19 testimony. I don't have it in front of me.

20 MR. GERSCH: What are we up to?

21 MR. GARDNER: 27.

22 MR. GERSCH: Let's mark this 27.

1           (Plaintiffs' Exhibit 27, Testimony from  
2     Committee on Oversight and Government Reform, was  
3     marked.)

4     BY MR. GERSCH:

5           Q     I'm showing you a transcript of your  
6     testimony before the Committee on Oversight and  
7     Government Reform on May 2018.

8           Mr. Comstock, I want to be clear. This  
9     is not a transcript made by the committee. Do you  
10    understand me?

11          A     I understand what you're saying.

12          Q     Okay.

13          A     I'm not sure why it's not a transcript  
14    made by the committee, but that's all right.

15          Q     We had this transcript --

16          A     Okay.

17          Q     -- made by a reporter who watched your  
18    testimony.

19          A     Okay.

20          Q     So let me direct you to Page 37, Line 12.  
21    See where it says, Ms. Norton?

22          A     Uh-huh.

1           Q    All right.  And this is where she asks  
2   you -- withdraw this.  Isn't what I want --

3                   Let me direct your attention to Lines 2  
4   through 5, okay.

5           A    All right.  Let me read the context of  
6   which Lines 2 through 5 appear.

7           Q    Let me ask your question and then you can  
8   read whatever you need.

9           A    All right.  Very good.

10          Q    On Lines 2 through 5, Ms. Norton asked  
11   you, "My question to the two of you" -- and you  
12   were there with Mr. Jarmin; is that right?

13          A    Correct.

14          Q    She says, "My question to the two of you  
15   is:  Why did this question, which was dropped for  
16   70 years, suddenly appear on the decennial census?  
17   What was the point?"

18                   And then you answered, "Thank you very  
19   much, Congresswoman, for the question.  We  
20   received a request from the Department of Justice  
21   for this, and their rationale was that the level  
22   of the information that they needed to enforce the

1 Voting Rights Act was not available."

2 That's the testimony you gave, correct?

3 A Again, this is not the official  
4 transcript, but presuming your person transcribed  
5 this correctly, that appears to be what I said.

6 Q And this squares with your memory of what  
7 you said, right?

8 A Correct.

9 Q And when she says, why did this question  
10 get added, and you say, we received a request from  
11 the Department of Justice, that's not the whole  
12 truth; is it?

13 A That's a -- that's a factual statement.

14 Q It's a factual statement that you  
15 received a request from Department of Justice,  
16 right?

17 A Correct.

18 Q But the reason the Department of Justice  
19 made the request is because you guys at the  
20 Department of Commerce put them up to it; isn't  
21 that right?

22 A I don't agree with that characterization.

1 But, again, the Department of Justice decided that  
2 this was information they could use and they made  
3 the request. That starts the formal process for  
4 us to review the question. Had they decided they  
5 did not need that information and not made the  
6 request, then the Commerce Department would have  
7 had to decide if there was some rationale that the  
8 Commerce Department needed this information.

9 Q Sure. But the reason the  
10 Department of Justice made this request of the  
11 Department of Commerce was that the Department of  
12 Commerce went to the Justice Department and said,  
13 will you please make this request of us, right?

14 A We asked them if they could use this  
15 information. That was an independent decision on  
16 their part.

17 Q You asked them if they could use  
18 information from a citizenship question, right?

19 A At the block level, which is not  
20 currently available.

21 Q And you asked them if they would be  
22 willing to request that from the

1 Department of Justice [sic]?

2 A If that was information that they found  
3 useful, then they could request it, yes.

4 Q You asked them to request it from the  
5 Department of Justice, correct?

6 A Again, what we asked them was if they  
7 could use this information, and if so, then they  
8 would need to request it.

9 Q Do you deny that you personally went to  
10 representatives in the Department of Justice and  
11 asked them if they would request the addition of a  
12 citizenship question?

13 MR. GARDNER: Objection. Asked and  
14 answered.

15 THE WITNESS: To answer, once again, I  
16 went to representatives of the  
17 Department of Justice and asked them if this would  
18 be information that they would find useful, and if  
19 so, they could request it.

20 BY MR. GERSCH:

21 Q Yeah. I got that part, and I'm asking a  
22 slightly different question now.

1           A     Okay.

2           Q     Didn't you say to the  
3     Department of Justice when you were talking to  
4     them, in words or substance, we would appreciate  
5     it if you would ask us to include a citizenship  
6     question?

7           A     I never made such a request.

8           Q     And I take it, based on your prior  
9     testimony, you don't know what conversation  
10    occurred between the Secretary and the Attorney  
11    General?

12          A     That's correct.

13          Q     Did you understand that Ms. Teramoto was  
14    on that call between the Secretary and the  
15    Attorney General?

16          A     I don't know who was on the call.

17          Q     In any case, however we word it, you  
18    didn't tell Representative Norton when she asked  
19    why is this question being added, that you had  
20    gone to the Department of Justice and suggested  
21    that this might be something they'd be interested  
22    in?

1 A That's correct.

2 Q Why is that?

3 A Again, because until the department makes  
4 its independent decision to request this  
5 information, that was the -- there was no question  
6 that was going to be added.

7 Q When Representative Norton says, why is  
8 the question being added? Don't you think it's  
9 relevant that the Secretary of Commerce wanted  
10 this question added independent of the  
11 Department of Justice's request?

12 MR. GARDNER: Objection. Form.

13 THE WITNESS: Again, now --

14 MR. GARDNER: What's your -- withdrawn.

15 MR. GERSCH: What's your objection?

16 MR. GARDNER: I didn't understand that  
17 question. Is it relevant to Secretary -- or I'm  
18 sorry -- Representatives Norton Holmes question  
19 that the Secretary had requested DOJ to ask? I  
20 didn't even --

21 MR. GERSCH: I got it.

22 BY MR. GERSCH:

1 Q Let me put a different question to you.

2 A Sure.

3 Q When Representative Norton asks you the  
4 why question, don't you think it's responsive to  
5 the why question that the Secretary of Commerce  
6 wanted to add a citizenship question independent  
7 of the Department of Justice's request?

8 A No. I don't think it's relevant. His  
9 decisional memo laid out very clearly the  
10 rationale that was the basis of his decision.  
11 Whatever his personal feelings may have been are  
12 irrelevant to that decision.

13 Q It laid out a rationale. We can agree on  
14 that, right?

15 A That's what he's required to do under the  
16 law, is lay out a rationale. That is the  
17 rationale for his decision and that's what he's  
18 standing on.

19 Q Okay. He laid out a rationale. Is it  
20 your understanding, under the law, that if the  
21 rationale is not his real reason for doing it, we  
22 should ignore the real reason, and we should only

1 focus on the pretextual reasons that he offers up?

2 MR. GARDNER: Objection. Calls for a  
3 legal conclusion.

4 THE WITNESS: The Secretary's decision  
5 memo lays out a valid reason that's consigned to  
6 his discretion under the law, and that is the  
7 rationale he provided to staff, and that is the  
8 rationale that we placed in the record. So that  
9 is his reason for having the question.

10 BY MR. GERSCH:

11 Q My question is a little different. If  
12 the Secretary's real rationale is something  
13 different than the rationale he lays out in his  
14 decisional memo, is it your understanding, under  
15 the law, that we're to ignore the real reason and  
16 only focus on what's in the decisional memorandum?

17 MR. GARDNER: Objection. Calls for a  
18 legal decision.

19 THE WITNESS: Your hypothetical is  
20 premised on the false conclusion that there is  
21 some illegal rationale that would be provided and  
22 be exposed and be referenced. There is none.

1 It's committed to his discretion to add a  
2 question, as long as you make it through the other  
3 things, Paperwork Production Act, et cetera. So  
4 it's -- I don't understand the basis for your  
5 question. But there's -- at the base of your  
6 question is this hypothetical that there's some  
7 supposed illegal reason that would be -- that  
8 would nullify a perfectly valid decision. I don't  
9 agree with that assessment.

10 BY MR. GERSCH:

11 Q Mr. Comstock, I want you to listen to my  
12 question carefully, because there was no reference  
13 to any illegal rationale, and I'm going to put it  
14 to you again and there will be no reference to an  
15 illegal rationale. And my only question -- and,  
16 by the way, I'm happy if you want to take this as  
17 a hypothetical.

18 My only question is: If the Secretary  
19 lays out a rationale in his decisional memorandum  
20 which is different than his real rationale, is it  
21 your understanding that we're supposed to ignore  
22 the real rationale and only focus on what's in the

1 decision memo?

2 MR. GARDNER: Given your introductory  
3 clause, objection. Calls for a hypothetical.  
4 Objection. Calls for a legal conclusion.

5 THE WITNESS: Again, a decision is valid  
6 if a valid reason has been spelled out, and that  
7 is what we did.

8 BY MR. GERSCH:

9 Q Could you answer my question?

10 A Again, I don't accept the premise of your  
11 question, which is that there's some other reason  
12 besides what was provided in the memo.

13 Q It's a hypothetical question, sir. The  
14 question is --

15 A I'm not going to answer a hypothetical on  
16 that basis.

17 Q I'm asking you to answer it, and you're  
18 here to answer questions, and I think I'm fairly  
19 following up on your testimony.

20 My question to you is real simple: If  
21 the Secretary lays out a rationale in his  
22 decisional memorandum and it's not his real

1     rationale, is it your understanding that what  
2     we're supposed to focus on is what's in the  
3     decisional memorandum and we're not supposed to  
4     look at the rationale?

5             MR. GARDNER: Objection. Calls for  
6     hypothetical. Objection. Calls for legal  
7     conclusion.

8             THE WITNESS: Again, we're at loggerheads  
9     here because you keep spelling out something that  
10    is -- that presupposes there is some other  
11    rationale that would be sufficient to outweigh a  
12    legitimate rationale and, therefore, must be  
13    noticed and taken care of. I mean, the government  
14    makes decisions all the time and spells out a  
15    rationale. Do some of decision-makers have,  
16    perhaps, other reasons, maybe, but it's not  
17    relevant to the legal analysis.

18            Q     We shouldn't know what Secretary --  
19    withdrawn.

20                    We shouldn't know what the real rationale  
21    is; is that testimony?

22            A     I --

1 MR. GARDNER: Objection. Calls for a  
2 legal conclusion.

3 THE WITNESS: Again, I have no reason to  
4 believe that the rationale is anything other than  
5 what's in the memo.

6 BY MR. GERSCH:

7 Q Well, sir, actually, you testified  
8 previously that the Secretary had a rationale for  
9 asking this question, which he didn't reveal to  
10 you and had nothing to do with the  
11 Department of Justice's request.

12 A I disagree with that statement.

13 Q Let's try this one other way. You don't  
14 disagree with the proposition that a  
15 decision-maker could have a rationale that is  
16 different than what he chooses to spell out in his  
17 decisional memorandum, right?

18 MR. GARDNER: Objection. Calls for  
19 hypothetical.

20 THE WITNESS: Again, I don't know -- I  
21 don't -- it's impossible to answer that question,  
22 because you -- I'm not sure where you're going

1 with it.

2 BY MR. GERSCH:

3 Q I'm not asking you to know where I'm  
4 going with it. I'm asking you to answer the  
5 question. I'll put it to you again.

6 You don't disagree with the proposition  
7 that it's possible for the decision-maker to have  
8 one rationale which he puts in the decisional  
9 memorandum and a completely different rationale  
10 which is the real reason he wants the decision  
11 done?

12 MR. GARDNER: Objection. Calls for a  
13 hypothetical.

14 THE WITNESS: Again, in the context we're  
15 dealing with, I don't agree with that statement.

16 BY MR. GERSCH:

17 Q It's not possible for that to happen,  
18 it's not possible for the decision-maker to put  
19 one rationale in the decisional memo and have a  
20 completely different rationale for why he wants  
21 the decision?

22 MR. GARDNER: Objection. Calls for a

1 hypothetical.

2 THE WITNESS: In my experience with the  
3 federal government service across 30 years, both  
4 Democrat and Republican, I'm not aware of  
5 decision-makers who would do such a thing.

6 BY MR. GERSCH:

7 Q This would never happen, in your view,  
8 right?

9 A I'm not going to use the word never.  
10 Clearly, in the course of human history, things  
11 like that do happen. That's not been my  
12 experience that it generally is the case.

13 Q That's fine. Put aside your experience.  
14 I'm just asking you conceptually, you don't have  
15 difficulty understanding that a decision-maker  
16 could say I'm doing this for one reason without  
17 revealing that he is actually doing it for a  
18 different reason. You understand that concept,  
19 right?

20 MR. GARDNER: Objection. Calls for a  
21 hypothetical.

22 THE WITNESS: Yeah. It's a hypothetical

1 to which the answer is always going to be yes. So  
2 to the extent that makes you happy, sure.

3 BY MR. GERSCH:

4 Q Okay. So you do understand that concept.  
5 So when that occurs, when it is the case that the  
6 decision-maker puts forth a stated rationale,  
7 which is, in fact, not his real rationale, is it  
8 your understanding that we should pay no attention  
9 to his real rationale and focus only on his stated  
10 rationale?

11 MR. GARDNER: Objection. Calls for  
12 hypothetical objection. Calls for a legal  
13 conclusion.

14 THE WITNESS: I'm not going to answer  
15 that question.

16 MR. GARDNER: Would now be a good time  
17 for a break? We've been going about an hour.

18 VIDEOGRAPHER: This concludes Media Unit  
19 Number 5. The time on the video is 3:11 p.m. We  
20 are off to record.

21 (Off the record.)

22 VIDEOGRAPHER: This begins Media Unit

1 Number 6. The time on the video is 3:37 p.m. We  
2 are on the record.

3 (Plaintiffs' Exhibit 28, Memo, was  
4 marked.)

5 BY MR. GERSCH:

6 Q Mr. Comstock, we're back on the record.

7 After the Department of Justice made  
8 their formal request for the addition of a  
9 citizenship question in December of 2017, you  
10 understand that the Census Bureau did some  
11 analysis with respect to that request, right?

12 A Correct.

13 Q All right. And one of the things that  
14 the Census Bureau produced is a document that's  
15 been marked Exhibit 28.

16 A Okay.

17 Q Is that fair to say?

18 A It appears to be a memo from John Abowd  
19 to the Secretary, so will -- oh, it's marked  
20 draft, so --

21 Q Dated January 19, 2018, as you say, from  
22 John Abowd, Chief Scientist at the Census Bureau,

1 to Secretary Ross through Karen Dunn Kelley.

2 You've seen this before, haven't you?

3 A I don't know that I've seen this  
4 particular draft. It's marked draft, so I don't  
5 know that this document ever made it up to the  
6 Secretary's office.

7 Q Did you see a form of this document,  
8 whether it was this one or not?

9 A I saw some form of this document, yes.

10 Q I want to direct your attention to the  
11 one, two, three -- third full paragraph, last  
12 sentence, and in it Mr. Abowd addresses  
13 Alternative B -- and, by the way, you understand  
14 Alternative B is adding a citizenship question to  
15 the census, right?

16 A That appears to be what the memo says,  
17 yeah.

18 Q So what Mr. Abowd reports is  
19 Alternative B -- that is adding a citizenship  
20 question -- is, quote, very costly, harms the  
21 quality of the census count, and would use  
22 substantially-less active citizenship status data

1 that are available from administrative sources.

2 You knew that that is what the  
3 Census Bureau had concluded, right?

4 A Well, again, that's a -- this is a draft  
5 pre-decisional memo. So I'm not sure if this was  
6 the final document that was sent to us or not.

7 Q I'll represent to you that this  
8 is -- that the record made in this case so far is  
9 that this is the last draft produced. Does that  
10 help you --

11 A Is that -- okay.

12 Q I'm happy if you want to consult with  
13 your counsel.

14 MR. GARDNER: If you -- you can answer  
15 the question, yes.

16 THE WITNESS: Sure. Assuming this is the  
17 final version, then that's what the document says,  
18 yes.

19 BY MR. GERSCH:

20 Q That's not my question. You came to  
21 understand, isn't that right, that the view of the  
22 Census Bureau was that asking the citizenship

1 question is very costly, harms the quality of the  
2 census count and would use substantially-less  
3 citizenship status than are available from  
4 administrative sources?

5 A I would agree that that's the summary  
6 statement here. That it overstates the case they  
7 made further in the document. But that is not an  
8 accurate representation of what's actually  
9 reflected in the document.

10 Q I want to make sure I understand your  
11 testimony. You're saying you disagree with their  
12 conclusion?

13 A I disagree with that characterization as  
14 being the final conclusion of the Census Bureau,  
15 yes.

16 Q Ah. Okay. So you think that what I just  
17 read to you doesn't fairly reflect the view of the  
18 Census Bureau; is that right?

19 A I think that reflects the view of  
20 Dr. Abowd and that it's very imprecisely stated.  
21 If you read the rest of the memo, it provides more  
22 detail, and so I would not agree with the

1 statement, because it's not backed up in the  
2 document that it would be very costly. That's a  
3 relative term. And that it would use  
4 substantially-less accurate, I disagree with those  
5 statements.

6 Q Yeah. I understand, and I stipulate that  
7 you disagree with them. My question is a little  
8 different. I'm asking if you understand this is  
9 the position of the Census Bureau, whether you  
10 agree with it or not, and I stipulate that you  
11 don't.

12 A And just, again, I'm being very clear  
13 that this sentence taken out of context, I would  
14 say is not the position of the Census Bureau. The  
15 position of the Census Bureau is reflected in this  
16 full memo, which provides greater detail, which is  
17 not, I would say, accurately characterized in this  
18 summary statement at the front.

19 Q Did you ever meet with the folks at the  
20 Census Bureau about this analysis?

21 A Yes, we did.

22 Q Okay. When did you do that?

1           A     I couldn't tell you the exact date.

2           Q     Who did you meet with?

3           A     Dr. Abowd, Dr. Jarmin. It was a large  
4 meeting.

5           Q     And Dr. Abowd and Dr. Jarmin, they stood  
6 by this analysis, right, the analysis in  
7 Exhibit 28?

8           A     I'd say that, yeah, they stood by the  
9 entire analysis, not necessarily that statement.

10          Q     And the entire analysis includes the  
11 statement that I read to you, right?

12          A     Again, you're -- I think you're taking a  
13 single statement out of context.

14          Q     My question is a little different. I'm  
15 saying when you said, they stood by the entire  
16 analysis, that includes the statement that I read  
17 you?

18          A     And, again, I will say that I think  
19 you're trying to get me to say that particular  
20 statement represents the view of the  
21 Census Bureau, and that is not my understanding.

22          Q     Okay. When you say it's not your

1 understanding, at no point did Dr. Jarmin or  
2 Dr. Abowd say, no, we don't believe that  
3 Alternative B is very costly, harms the quality of  
4 the census count and would use substantially-less  
5 accurate citizenship status data that are  
6 available from administration sources; isn't that  
7 right? They never took it back?

8 A We never asked them to take it back.

9 Q And they never did?

10 A I don't know if they took it back or not.

11 Q In your presence, sir.

12 A Again, they were never asked, to my  
13 knowledge, to take that statement back, so there  
14 would be no reason for them to take it back.

15 Q And they didn't take it back, did they?

16 A I don't know whether they took it back.

17 Q In your presence, they didn't take it  
18 back?

19 A Again, I look at their entire memo, not  
20 that statement.

21 Q I'm not asking that question. They  
22 didn't take this statement back that I just read

1 to you three times?

2 A Again, my point is, they were never asked  
3 to take it back, so there would be no reason for  
4 them to take it back.

5 Q I just want there to be no  
6 misunderstanding, Mr. Abowd [sic], if at trial  
7 you're going to say they took it back, I want to  
8 hear that right now.

9 MR. GARDNER: He's not Mr. Abowd.

10 BY MR. GERSCH:

11 Q I'm sorry, Mr. Comstock. It's late in  
12 the day.

13 Mr. Comstock, if you're going to say at  
14 trial that Dr. Abowd or Dr. Jarmin took this  
15 statement back, I want to hear that right now.  
16 Can we agree on that, that you'll tell me right  
17 now?

18 A I will agree -- I will agree that I would  
19 say that is not representative of the data that  
20 was presented to us in the course of extensive  
21 discussions. That that statement is an early  
22 statement that mischaracterizes the final

1 conclusions that we understood.

2 Q When you say earlier, it's the statement  
3 as of the January 19th memo, you don't disagree  
4 with that?

5 A Again, I'm not contesting they provided  
6 this investigation.

7 Q Focus on timing. You said this was an  
8 early statement and you don't think it was  
9 reflective of their final conclusions.

10 My question is: You're not saying it  
11 doesn't reflect their position as of January 19th,  
12 are you?

13 A I am saying, again, that I think you're  
14 taking a single statement out of context and  
15 trying to represent it has the position of the  
16 Bureau as conclusive, and I'm saying I disagree  
17 with that statement.

18 Q Let me show you -- let's mark this as  
19 Exhibit 29.

20 (Plaintiffs' Exhibit 29, Memo, was  
21 marked.)

22 BY MR. GERSCH:

1           Q    You see what's been marked as Comstock  
2   Exhibit 29, it is a March 1, 2018 memo from  
3   Dr. Abowd for Secretary Ross, Bates stamp first  
4   Page 001308.

5                   Do you have that in front of you?

6           A    I do.

7           Q    Have you seen this document before?

8           A    I believe I've seen this document.

9           Q    Okay. And this document relates to an  
10   Alternative D, right?

11          A    Correct. But I'll note, again, it's  
12   marked draft, and I'm just mystified as to why we  
13   keep getting draft documents as opposed to finals.  
14   Certainly draft documents don't normally come to  
15   us.

16                   MR. WALSH: Counsel, would it be possible  
17   to hand out --

18                   MR. GERSCH: Oh, I'm sorry.

19                   MR. WALSH: Thanks.

20   BY MR. GERSCH:

21          Q    This is about Alternative D; is that  
22   right?

1           A     That's correct. But I'm still asking a  
2     question, why am I getting a draft version of this  
3     instead of a final?

4           Q     I don't get to testify. All I can do is  
5     ask the questions.

6                     And Alternative D was the idea of  
7     Secretary Ross, that perhaps you could combine  
8     Alternative B, which is asking the citizenship  
9     question of every household in the decennial  
10    census, and Alternative C, which was don't ask the  
11    question but use administration data to figure out  
12    citizenship status, correct?

13          A     Correct.

14          Q     And at the back of this memo, the last  
15    sentence says, "In sum, Alternative D would result  
16    in poorer quality citizenship data than  
17    Alternative C. It would still have all the  
18    negative cost and quality implications of  
19    Alternative B outlined in the draft January 19th  
20    memo to the Department of Commerce."

21                 You saw this at the time, right?

22          A     Again, I can't say that this was the

1 document I saw, because I did not see something  
2 marked draft pre-decisional V10.

3 Q You think you saw a version of it that  
4 didn't have draft on it?

5 A I have no idea. But we don't typically  
6 see documents that say draft.

7 Q I'll represent that we've never seen a  
8 version of either of these documents that aren't  
9 marked draft. If there is one -- if there are  
10 versions, I would like them right now.

11 MR. GARDNER: I represent we've produced  
12 what we have.

13 BY MR. GERSCH:

14 Q Regardless of the format, you became  
15 acquainted with the views of Census that  
16 Alternative B would result in poorer quality  
17 citizenship data than Alternative C and still have  
18 all the cost and quality implications of  
19 Alternative B outlined in the draft January 19th  
20 memo to the Department of Commerce; you became  
21 acquainted with that conclusion of theirs, right?

22 A I did.

1           Q    Okay.  By the way, you'll notice it  
2   says -- this refers to the January 19th memo as  
3   being a draft.

4           A    Okay.  Like I said --

5           Q    Do you see that?

6           A    I see it.  That it says that, yes.  
7   Perhaps that is what they provided to us.  I don't  
8   know.  We produced whatever is in the record, so  
9   if this is what's in the record -- as long as I'm  
10  being given the final version, then okay.

11          Q    All right.  You're not saying that the  
12  Census Bureau took back the conclusion reflected  
13  in this last paragraph that I've read you from  
14  Exhibit 29, are you?

15          A    Again, I think there was iterative  
16  exchange in which the conclusions of the  
17  Census Bureau to staff and some of their  
18  assertions did not hold up under  
19  cross-examination.

20          Q    Whether you think they held up or not, my  
21  question to you is:  Did the Census Bureau ever  
22  take back the conclusion that's in the last

1 paragraph of this March 1 memo?

2 A You'd have to ask them.

3 Q In your presence, did they say any such  
4 thing?

5 A I didn't ask them to take it back.

6 Q I'm not asking whether you asked them.  
7 I'm asking -- withdrawn.

8 There were other people in the meeting  
9 besides you, right?

10 A There were a series of meetings, so --

11 Q How many meetings did you have about this  
12 memo, this March 1 memo?

13 A I couldn't tell you.

14 Q About?

15 A Might have met once or twice. I really  
16 couldn't tell you.

17 Q And who did you remember being there  
18 besides Dr. Abowd and Dr. Jarmin?

19 A Again, I don't know if it was  
20 specifically on this memo or this presentation or  
21 whether they sent it to us. There were multiple  
22 meetings on the question. Who was at each

1 meeting, I couldn't tell you.

2 Q I think it would be fair to say there  
3 were multiple meetings about Census Bureau's  
4 analysis of the citizenship question, right?

5 A Yes.

6 Q Okay. And what's your best recollection  
7 of how many meetings there were?

8 A I don't know. Two or three.

9 Q And if this memo is dated March 1 and the  
10 decisional memo is dated March 26th. What's your  
11 best recollection about when the last -- the last  
12 meeting was, the last of these two or three  
13 meetings?

14 A Probably somewhere in the vicinity of  
15 March 20th.

16 Q Okay. And my question simply to you is,  
17 sir: Did the Census Bureau people ever say we're  
18 taking it back, you've convinced us, we don't  
19 agree with the conclusion we put forth in the last  
20 paragraph?

21 A No.

22 Q And did you ever have -- withdrawn.

1 Did you have a meeting about the wording  
2 of the March 26th memo with the Census Bureau?

3 A I don't believe so.

4 Q You didn't have a meeting with Dr. Abowd  
5 with Secretary Ross there on the morning of the  
6 26th or thereabouts?

7 A No, not to my recollection. But it's  
8 entirely possible.

9 Q So it's your -- and all I can ask for is  
10 your best recollection.

11 It's your best recollection that you  
12 never had a meeting with the Census Bureau about  
13 the wording of the March 26 decisional memo?

14 A Not that I recall, no.

15 Q Did you ever have any analysis of the  
16 citizenship question prepared by experts other  
17 than the folks at the Census Bureau?

18 A Not that I know of, no.

19 Q Did you ever get any input from somebody  
20 with technical expertise with respect to the  
21 Census Bureau's analysis of the citizenship  
22 question who was not from the Census Bureau?

1 A No.

2 Q Did anyone review the Census Bureau's  
3 analysis of what was wrong with the citizenship  
4 question who was not a lawyer?

5 A The Secretary.

6 Q Other than the Secretary?

7 A Karen Dunn Kelley.

8 Q Other than the Secretary and Karen Dunn  
9 Kelley?

10 A Obviously, Dr. Jarmin, Dr. Abowd.

11 Q I'm talking about people outside the  
12 Census Bureau.

13 A Census Bureau.

14 Well, let's see -- well, Wendy Teramoto  
15 might have. But, no, primarily would have been  
16 Office of General Counsel doing the review.

17 Q And you?

18 A And me.

19 Q And you're a lawyer?

20 A Yes, I am a lawyer.

21 Q All right. Let's mark the decisional  
22 memorandum as Exhibit 30.

1           (Plaintiffs' Exhibit 30, Decisional  
2 memorandum, was marked.)

3 BY MR. GERSCH:

4           Q     Mr. Comstock, I show you what's been  
5 marked as Exhibit 30. This is Secretary Ross's  
6 March 26, 2018 decisional memorandum with his  
7 signature affixed to it, correct?

8           A     Yes.

9           Q     I just have a few questions on that.  
10                I may have fewer than I thought.

11                Let me just drop back to Exhibits 28 and  
12 29. The Census Bureau analysis for a second --

13           A     Uh-huh.

14           Q     -- and then we'll get to Exhibit 30.

15                With respect to the Census Bureau  
16 analysis, you understood that they researched the  
17 question about the citizenship question, they  
18 researched that by looking at information from the  
19 decennial -- past decennial censuses, right?

20           A     Mostly the long form, yes.

21           Q     And past ACS --

22           A     Correct.

1 Q -- surveys, right?

2 A Yes.

3 Q You said mostly the long form, but also  
4 the short form, right? They did a comparison  
5 between response rates from the short form and  
6 response rates on the long form, right?

7 A Right.

8 Q And the long form, we're talking about  
9 something that's filled out by on the order of 300  
10 million people or something -- withdrawn.

11 It reflects data on 300 million people?

12 A Well, the long form is --

13 Q I should have said the short form.  
14 You're right. Let me put it to you again.

15 The short form reflects data on  
16 approximately 300 million people?

17 A That would be about right, yeah.

18 Q And it's filled out by over 100 million  
19 people, right?

20 A I couldn't answer that question. I don't  
21 know.

22 Q It's a larger number.

1           A     I think it's 169 million households or  
2 something.

3           Q     And the ACS, roughly, how many people  
4 fill out the ACS in rough terms?

5           A     My recollection is it's about two to  
6 three -- two and half to three percent per year.

7           Q     Two and half to three percent of the  
8 total population?

9           A     Total number of households.

10          Q     And the number of households you think  
11 are 160 million?

12          A     You'd have to look at the data.

13          Q     But that's --

14          A     In the ballpark, yeah.

15          Q     So the 2 or 3 percent that fill out the  
16 ACS, those are millions of people, right?

17          A     Oh, yeah. Right.

18          Q     Okay. And you'd call -- withdrawn.

19                 When the Census Bureau does analyses  
20 based on their findings from the decennial census  
21 and the ACS --

22          A     Uh-huh.

1           Q    -- those are empirical analyses, right,  
2   they count?

3           MR. GARDNER:  Objection.  Form.

4           THE WITNESS:  You'd have to ask the  
5   Census Bureau how they do their analysis.

6   BY MR. GERSCH:

7           Q    Right.  But you understand what empirical  
8   means, right?

9           A    I understand the use of the term, but I  
10   don't know if all of their analyses are based on  
11   empirical or some other method.

12          Q    Certainly, some of their analyses are  
13   empirical, right?

14          A    Sure.  And some are sampling and some of  
15   them are imputation.  They use a variety of  
16   statistical methods.

17          Q    Just a few more questions.  Now, turn to  
18   Exhibit 30 if you would and turn to Page 7.

19          A    Yeah.

20          Q    Last paragraph, first sentence reads,  
21   "The Department of Commerce is not able to  
22   determine definitively how inclusion of a

1 citizenship question on the decennial census will  
2 impact responsiveness."

3 You saw that, right?

4 A Yep.

5 Q It says the Department of Commerce is not  
6 able to determine definitively. What does that  
7 mean, determine definitively?

8 A What it says. In other words, the  
9 evidence presented to us was not determinative,  
10 and it was not definitive that there would be a  
11 drop in response rate. There was a widely-held  
12 belief that there would be a drop in response, but  
13 many of those same people that they were not  
14 answering the citizenship question, were already  
15 not answering the census because of distrust of  
16 government, because of whatever the other reasons  
17 may be.

18 So they could not identify with any  
19 specificity that the addition of a citizenship  
20 question would, in fact, cause a decrease in  
21 response rate. They estimated there could be a  
22 decrease of a certain number of households, which

1 was less than half a percent. And based on the  
2 size and volume of the exercise we were  
3 undertaking, that is not sufficient to say it's an  
4 insurmountable obstacle.

5 MR. GERSCH: I'll move to strike it as  
6 nonresponsive.

7 BY MR. GERSCH:

8 Q My question --

9 A It was responsive.

10 Q What do you mean by definitively?

11 MR. GARDNER: Objection. Asked and  
12 answered.

13 THE WITNESS: What I mean by definitive  
14 is they did not provide evidence that you could  
15 draw a straight line and say if you do this, this  
16 will happen. They speculated it, and they drew  
17 some conclusions based on other information, but  
18 logical people can look at that information and  
19 say, yes, but that's not a necessary conclusion  
20 that, in fact, as was pointed out, the same  
21 hard-to-count populations who were already not  
22 responding to the census were likely the very same

1 ones that might not answer the census.

2 And just to your point, just to  
3 illustrate this, we do know from the ACS that  
4 70 percent of the people who are presented with  
5 the citizenship question answer it correctly, who  
6 are, in fact, noncitizens and 30 percent don't.  
7 So it doesn't necessarily mean that you add a  
8 citizenship question and people refuse to answer.  
9 We have a population that does answer.

10 I know that's not the answer you wanted.

11 BY MR. GERSCH:

12 Q Mr. Comstock, we're missing each other,  
13 so let me try it a little differently.

14 I'm not asking you whether you didn't  
15 think the Census Bureau's answer was definitive.  
16 I'm asking what is -- what would be -- let's try  
17 it this way, what would you consider to be  
18 definitive evidence?

19 A If they had evidence that showed that the  
20 addition of a citizenship question would cause a  
21 number of people that otherwise would have  
22 responded to the census to not respond.

1           Q     And what would they need to show you  
2     that?

3           A     They would problem have to put the  
4     question on the decennial census and compare it to  
5     prior decennial censuses and eliminate for the  
6     errors. And, unfortunately, they don't have that  
7     data from when they were asking that question, so  
8     they couldn't make the comparisons.

9           Q     Well, they could have done it on a test  
10    basis for the 2020 census, right?

11          A     They already asked the ACS to 43 million  
12    households. So we'd asked and answered that  
13    question already.

14          Q     My question --

15          A     It's been well tested.

16          Q     My question is: They could do it on the  
17    2020 census on a trial basis, right?

18          A     And that's, basically, what the Secretary  
19    has determined to do.

20          Q     No. The Secretary has not decided to do  
21    it on a trial basis. He wants everyone asked,  
22    right?

1           A     Well, that would be a trial basis.

2           Q     Let me do it differently. You could do  
3     it on the 2020 census as a test where it's being  
4     asked as a sample of the people, right?

5           A     That would not give you -- actually, that  
6     would give you no more information than you get  
7     from the ACS, so we already have that information.

8           Q     You think asking the question on the  
9     decennial census is the same thing as asking on  
10    the ACS?

11          A     No, I don't.

12          Q     Okay. How about a randomized control  
13    study of some kind, randomized controlled testing?

14          A     We already have that.

15          Q     You think you already have that?

16          A     Sure, through the ACS.

17          Q     Okay. Was a proposal to do a randomized  
18    controlled test in May of this year from the  
19    Census Bureau?

20                MR. GARDNER: Objection. Lacks  
21    foundation.

22                THE WITNESS: Not that I'm aware of.

1 BY MR. GERSCH:

2 Q You never heard that Victoria Velkoff  
3 proposed conducting a randomized controlled test  
4 in May of this year?

5 A No.

6 Q This is the first time you're hearing  
7 this?

8 A Yes.

9 MR. GERSCH: Okay. We can go off for a  
10 second.

11 VIDEOGRAPHER: We're going off the  
12 record. The time on the video is 4:02 p.m.

13 (Off the record.)

14 VIDEOGRAPHER: We're back on the record.  
15 The time on the video is 4:04 p.m.

16 MR. GERSCH: Mr. Comstock, thank you very  
17 much. Those are all the questions I have at this  
18 time.

19 Our view is there is certain information  
20 we haven't received from the government, and to  
21 that extent, we are keeping the deposition open,  
22 but this concludes my questions for today.

1           MR. GARDNER: And our position is the  
2 deposition is concluded after today.

3           THE WITNESS: Thank you for your  
4 questions.

5           EXAMINATION BY MR. ROSENBERG:

6           Q And good afternoon, Mr. Comstock. My  
7 name is Ezra Rosenberg. I think I introduced  
8 myself to you. Although I might have used your  
9 wrong name when I first introduced myself.

10          A That's okay.

11          Q I represent the City of San Jose and  
12 Black Alliance for Just Immigration in the case  
13 that's been venued in the North District of  
14 California.

15          A Okay.

16           MR. ROSENBERG: And can everyone hear me  
17 down -- can you hear me?

18           MS. BOUTIN: Little louder, please.

19 BY MR. ROSENBERG:

20          Q And I'll try to be short and sweet. Let  
21 me just back up a bit.

22          A Okay.

1           Q    The initial impetus for putting the  
2   citizenship question on the 2020 census was not  
3   DOJ's idea; is that correct?

4           A    That's correct.

5           Q    It was Secretary Ross's idea, I think  
6   you've testified to that, correct?

7           A    He was the one who asked me to  
8   investigate it, yes.

9           Q    He told you sometime shortly after he was  
10   confirmed that he wanted the question on the 2020  
11   census, correct?

12          A    He asked me to explore putting it on,  
13   yes.

14          Q    Well, he actually said he requests the  
15   question be put on the census, correct?

16          A    That was the way he phrased it, yes.

17          Q    You said you would make that happen,  
18   correct?

19          A    I said I would do my best.

20          Q    And you would get the citizenship  
21   question in place, I think was -- were your words?

22          A    I said I would work to get that in place.

1           Q     And he asked you several times during the  
2     year what progress you were making on this; is  
3     that correct?

4           A     That's correct.

5           Q     And you met with Mary Blanche Hankey at  
6     DOJ as a result of that, correct?

7           A     Correct.

8           Q     And you wouldn't have met with her if  
9     Secretary Ross hadn't ask you to do what you can  
10    to put this citizenship question on the census,  
11    correct?

12          A     That's correct.

13          Q     And the only subject that you talked to  
14    Ms. Hankey about at that meeting was the  
15    citizenship question, correct?

16          A     No. I'm not sure that's the case.

17          Q     What else did you talk to her about?

18          A     I think we talked generally about what  
19    the Department of Commerce and Department of  
20    Justice overlap on, what we work on. So it was  
21    just broader conversation, but the primary focus  
22    was on the citizenship question.

1           Q     And then you memorialized or at least you  
2 summarized your discussion with her in the memo  
3 that you sent to Secretary Ross on September 8th,  
4 correct?

5           A     That's correct.

6           Q     And take a look at what's been marked as  
7 C15, please. That's it. Yep.

8                     The first paragraph you see that there's  
9 a sentence -- well, it reads, starting with the  
10 third sentence, "We" -- meaning you and  
11 Ms. Hankey --

12          A     Uh-huh.

13          Q     -- met in person to discuss the  
14 citizenship question."

15          A     Right.

16          Q     "She said she," and then it's blocked  
17 out, right?

18          A     Yes.

19          Q     Now, this is something that you wrote  
20 that's been blocked out, correct?

21          A     Correct.

22          Q     Do you know why it's been blocked out?

1           A     You'd have to ask the Justice Department  
2     redactors.

3           Q     Do you -- without saying what is said  
4     there, do you know what you wrote there that's  
5     been blocked out?

6           A     I don't recall.

7           Q     You did not ask her for legal advice, did  
8     you?

9           A     No.

10          Q     Do you have any reason to believe there  
11     is some privileged information in what's been  
12     blocked out?

13               MR. GARDNER:  Objection.  Calls for a  
14     legal conclusion.

15               MR. ROSENBERG:  He's always the client,  
16     and the client holds the privilege.

17               THE WITNESS:  I don't know what it says,  
18     so I trust the folks who redacted it believe  
19     there's a conclusion of some kind that is relevant  
20     to the investigation.

21     BY MR. ROSENBERG:

22          Q     Anyone at Commerce who was more involved

1 in the citizenship question other than you during  
2 the period from the time you came to Commerce  
3 until the citizenship question issue was resolved?

4 A Probably not, no.

5 Q Let me -- take a look at C5 that's been  
6 marked, which is the supplemental memorandum.

7 A Uh-huh. I've got it somewhere. It's a  
8 supplemental memorandum.

9 Q It's dated June 21 --

10 MR. GARDNER: You want to look at my  
11 copy?

12 THE WITNESS: Okay. All right. Go  
13 ahead.

14 BY MR. ROSENBERG:

15 Q When did you first hear that this  
16 document was going to be created?

17 A Sometime shortly before June 21st.

18 Q Do you recall approximately how many days  
19 before June 21st?

20 A I don't.

21 Q But before you got a copy of the  
22 document; is that correct?

1           A    No.  I think, actually, the first time I  
2   knew about it was when I was handed a copy of the  
3   document.

4           Q    So all of a sudden, it popped up on your  
5   desk one morning, our your computer?

6           A    Right.  Again, as I think I stated  
7   before, this was Office of General Counsel with  
8   Commerce was handling the litigation in  
9   conjunction with Department of Justice who  
10  represents us.  So they were having conversations  
11  on this matter.  I would have been called in  
12  simply to the point of saying, okay, this is being  
13  requested, do you have any thoughts or edits on  
14  it?

15          Q    So just so it's clear, you did not know  
16  that it was being prepared until you saw the first  
17  draft?

18          A    That's correct.

19          Q    Were you surprised to see it?

20          A    I didn't think it was necessary, but if  
21  that's the advice of counsel, we follow it.

22          Q    You understood that this was a supplement

1 to the March 26th determination by Secretary Ross?

2 A I understand that it's a supplement to  
3 the administration record.

4 Q And you --

5 A I don't think it supplements the decision  
6 by Secretary Ross.

7 Q You understood it supplements the  
8 administrative record and you understood this was  
9 a pretty important document, did you not?

10 A Not being experienced in this litigation,  
11 I couldn't say exactly how important this was or  
12 not.

13 Q Do you have an understanding as to the  
14 reason that this document was created?

15 A My understanding was the reason this  
16 document was created was the Department of Justice  
17 felt it would be advisable in this litigation.

18 Q Was there anything in the supplemental  
19 memorandum that was not known at the time that the  
20 Secretary issued his March 26th determination?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: No. I don't think there's

1 anything in this memorandum that was not done at  
2 the time of the decision.

3 BY MR. GERSCH:

4 Q After you received the draft of the  
5 memorandum, did you discuss it with anyone within  
6 Commerce, other than attorneys?

7 A Just the attorneys.

8 Q You did not discuss, at all, with  
9 Secretary Ross?

10 A Other than advising him that we -- this  
11 has been recommended to sign and that we've  
12 reviewed it and made a few edits, no.

13 Q Did he ask you why it was being  
14 recommended?

15 A I'd already provided that explanation.  
16 DOJ was suggesting that we needed it for  
17 litigation. He's not a litigator, so he's not  
18 going to question that.

19 Q Was he surprised when he saw this? Did  
20 he express surprise to you?

21 A Not particularly. I mean, he just said,  
22 if that's what they recommend, fine.

1           Q     Now, I think you testified that you were  
2     one of the two persons who were principally  
3     involved in the drafting of the March 26th  
4     determination; is that correct?

5           A     I was one of the two principal staff.  
6     There were a number -- quite a number of other  
7     people who reviewed it.

8           Q     Right. But you were one of the principal  
9     draft persons; is that correct?

10          A     I was principal -- James Uthmeier, I  
11     think, did the bulk of the drafting, and I did a  
12     lot of the editing.

13          Q     During the course of your preparation of  
14     the March 26th determination, did you consider  
15     including in the March 26th determination any of  
16     the information that's in the supplemental  
17     memorandum that's identified as C5?

18               MR. GARDNER: I'm going to object on the  
19     grounds that calls for disclosure of information  
20     subject to deliberative process by which I  
21     instruct the witness not to answer.

22     BY MR. ROSENBERG:

1 Q Are you going to follow counsel's advice?

2 A I'll follow my counsel's advice, yes.

3 Q By the way -- by the way, I think you  
4 testified that you made some edits to C5, the June  
5 21st supplemental memorandum; is that correct?

6 A I think I may have suggested a wording  
7 change or two.

8 Q Do you know what wording change or two  
9 you made?

10 A I have no recollection of that.

11 Q Did you maintain the original draft of  
12 the June 21st memorandum?

13 A I imagine I made it -- my edits in  
14 electronic form, but that would be, probably,  
15 privileged, under the administrative record.

16 Q Let's turn to C30, which is the  
17 March 26th memo. Now, is it stated anywhere in  
18 this memorandum that the Secretary had begun,  
19 considering the question of adding the citizenship  
20 question to the census almost a year prior or more  
21 than a year prior to the March 26th memorandum?

22 A It wouldn't be relevant to the

1 memorandum.

2 Q So you don't think that's important  
3 information?

4 A The government has lots of processes  
5 where -- and I've been involved in lots of  
6 processes throughout the government where things  
7 have been under consideration for months, years,  
8 decades, even, prior to an administrative record,  
9 and that's not usually included in the decision.

10 The question is once you began the formal  
11 action of considering this decision and in which  
12 you're presented with a situation where you need  
13 to make a decision, you document at how you arrive  
14 at your conclusion.

15 Q It's your testimony that the formal  
16 action is when?

17 A When we received the letter from the  
18 Department of Justice. Because prior to that,  
19 this was all speculation.

20 Q Well, but prior to that, you had been  
21 directed by the Secretary of the Commerce to put  
22 the citizenship question on the census --

1 A I'd --

2 Q -- isn't that correct?

3 A I'd been directed to explore putting a  
4 citizenship question on the census.

5 Q He said he wanted it on the census,  
6 correct?

7 A That was certainly his expressed  
8 interest.

9 Q It was an expressed statement, was it  
10 not?

11 A That's the way he phrased it. But,  
12 again, he can't put something on the census  
13 without having the legal authority or process in  
14 place to do so.

15 Q You agree it would have been more  
16 accurate if the first sentence of C30 said, as you  
17 know, pursuant to my request on December 12, 2017,  
18 the Department of Justice requested that the  
19 Census Bureau reinstate a citizenship question;  
20 isn't that more accurate?

21 A I wouldn't agree that's more accurate.

22 Q Isn't that what happened?

1           A     Again, the Department of Justice decision  
2     to ask -- send a letter requesting this is a  
3     decision they made independently. We cannot  
4     compel them to make that request.

5           Q     By the way, what does Section 2 of the  
6     Voting Act provide?

7           A     Well, my understanding of it -- and,  
8     again, it's been established that I'm not a Voting  
9     Rights Act expert -- is that there are cases in  
10    which you might have a population where as they  
11    set up a district, you have two minority  
12    populations. If one of those minority  
13    populations, for example, Hispanics population,  
14    has a large under of undocumented people, they  
15    might appear on paper to have a majority. When,  
16    in fact, they can never actually execute that  
17    majority because they don't have enough Citizen  
18    Voting Age Population people to carry that out.

19           Now, under the census, we already ask  
20    about age and we ask about race, so we can  
21    determine those two questions. What you can't  
22    determine is how many people of that population

1 are, in fact, eligible to vote.

2 Now, using the ACS data, the census  
3 provides estimates that the Justice Department  
4 uses for that very purpose. We know, in fact, as  
5 a result of this analysis, in the Census Bureau's  
6 efforts to promote Alternative C, they, in fact,  
7 did an analysis of that ACS data, and lo and  
8 behold, it came back that the data that we've been  
9 providing to the Justice Department is, in fact,  
10 at a fairly significant error. It's off by a  
11 factor of about a third. And so in light of that  
12 information, you'd absolutely want to go forward  
13 with this.

14 Q But the Census Bureau, nevertheless,  
15 recommended from a standpoint of accurate and  
16 completeness and quality of the census that there  
17 should not be a citizenship question added to the  
18 census, as opposed to continuing to rely on ACS  
19 data supplemented by the administrative records?

20 A No. In the process of this memorandum,  
21 back and forth, they could not articulate a  
22 rationale to support their belief that there would

1 be this decline in this response rate. Their  
2 entire analysis relied on the assumption that  
3 there would be this decline in response rate of a  
4 certain percentage and that that would, therefore,  
5 make the data less reliable.

6 What they couldn't refute was the fact  
7 that under their proposed approach, they would  
8 have had to impute -- again, based on statistical  
9 models -- the citizenship of 25 million voting age  
10 citizens. That was not a complete and accurate  
11 picture as far as the Secretary was concerned. So  
12 the Secretary said this is why we need to look at  
13 combining the two approaches, B and C, to come up  
14 with Alternative D. Because in the absence of  
15 that, we don't have good enough data on which to  
16 build the formula to impute those people that we  
17 would have to because we don't have answers on  
18 what their citizenship is. So that's the  
19 rationale that's laid out in this memo, and as far  
20 as I know, that's been the rationale that's been  
21 the Secretary's all along.

22 Q But not the rationale that was accepted

1 by the Census Bureau, which nevertheless, rejected  
2 as -- from a technical perspective, the  
3 Secretary's rationale; isn't that correct?

4 A I disagree that they rejected it from a  
5 technical perspective. They made some assumptions  
6 in making their recommendation -- and that's  
7 exactly what it is, it's a recommendation -- that  
8 this would be the case.

9 Q Let me turn your attention to C30,  
10 Page 001314, which is Page 2 of the March 26th  
11 memo. And turning your attention to the Option A,  
12 the third line in the sentence that says,  
13 "Additionally, the block group levels CVAP data  
14 currently obtained through the ACS has associated  
15 margins of error" --

16 A Correct.

17 Q -- "because the ACS is extrapolated based  
18 on the sample servers of the population."

19 A That's correct.

20 Q Do you know what the margins of errors  
21 are that are referred to in this sentence?

22 A I think you go on and see, you'll see it

1 described later in the same memo, which is that  
2 they have an error of approximately 30 percent, 28  
3 to 34, I believe, is the range.

4           Yeah. If you look on Page 4,  
5 "Census Bureau analysis showed that between 28 and  
6 34 percent of citizenship self-responses for  
7 persons with administrative records show are  
8 noncitizen were inaccurate. In other words, when  
9 noncitizens respond to long form or ACS questions  
10 on citizenship, they inaccurately mark citizen  
11 about 30 percent of the time. However, the  
12 Census Bureau is still evolving its use of  
13 administrative records. The Bureau does not have"  
14 --

15           (Thereupon, the court reporter  
16 clarified.)

17           THE WITNESS: This is in the -- under  
18 Option C of Page 4.

19           MR. GARDNER: You're going to have to  
20 slow down for the court reporter.

21           THE WITNESS: "So they inaccurately mark  
22 noncitizen about 30 percent of the time. However,

1 the Census Bureau is still evolving its use of  
2 administrative records, and the Bureau does not  
3 yet have a complete administrative record set for  
4 the entire population. Thus, using administrative  
5 records alone would provide DOJ data with CVAP  
6 data that was not a" -- "that would provide an  
7 incomplete picture."

8 BY MR. ROSENBERG:

9 Q And that's your understanding of what  
10 margins of error means as used on Page 01314?

11 A Well, yes. They're referring to that --  
12 that margin of error they're referring to is the  
13 28 to 34 percent they were off.

14 Q Do you know whether the data that would  
15 be provided to DOJ if a citizenship question were  
16 added to the 2020 census would also have margins  
17 of error associated with that data?

18 A It would almost certainly have some small  
19 margin of error, yes.

20 Q When you say a small margin of error, can  
21 you quantify that?

22 A Well, yeah. I think if you look at the

1 decision memo, it spells out that by providing the  
2 question on the census, you'll give 100 percent of  
3 the population to answer that question. For  
4 90 percent of the people that are citizens, that  
5 is not a problem. For the remaining 10 percent,  
6 approximately, again, based on -- again, on the  
7 ACS error rate, you can expect that approximately  
8 70 percent of those people will also answer that  
9 data correctly. So you're looking at, basically,  
10 what is the situation with the remaining  
11 30 percent? And based of the data we get from the  
12 actual responses, comparing that with the  
13 administrative records, which we're also working  
14 to improve, so that that 88.6 from the 2010 census  
15 is expected to go up, should be closer to 90 to  
16 95, we'll be able to narrow to down to about a 5  
17 percent of the population that we'll have to  
18 impute. It's a much smaller number than the  
19 number that's being --

20 Q And that's your understanding of how the  
21 phrase margins of error is used in the Secretary's  
22 memo?

1           A     Well, I'm not sure -- you're focused on  
2     the words margins of error.

3           Q     Right. All of my questions had to do  
4     with the phrase margins of error.

5           A     And you're saying --

6           Q     I'm just trying to get your understanding  
7     of the phrase.

8           A     No. I was focusing on the ACS. I mean,  
9     you're isolating the term margins of error.

10          Q     Yes.

11          A     When you do sampling or other things,  
12     there is a margin of error associated with that,  
13     and that margin of error can be larger or it can  
14     be smaller. And so they would provide, typically,  
15     a confidence interval connected with their data,  
16     and, again, depending on how the survey is  
17     conducted, it could be large or small.

18          Q     Well, that sounds a little bit different  
19     than what you testified to earlier, when I asked  
20     you about the phrase margins of error as used in  
21     the sentence I read to you from C003134.

22          A     You'll have to remind me what the

1 sentence is again --

2 Q Sure. "The Census was additionally" --

3 A -- because I focused on the ACS.

4 Q -- "block group level CVAP data currently  
5 obtained through the ACS has associated margins of  
6 error because the ACS is extrapolated, based on  
7 sample surveys of the population."

8 A And I believe that reference in the  
9 context of this memo may be scientifically  
10 incorrect, but it's referring to the fact that  
11 there's this error in the data of roughly  
12 30 percent. So this was not drafted by, quote,  
13 scientists. So we may have inaccurately used the  
14 term margin of error. But what the Secretary was  
15 referring to was the fact that we had now learned  
16 that the ACS data was fairly significantly  
17 inaccurate.

18 Q Do you know whether the Census Bureau's  
19 use of margins of error, quote, end quote, is the  
20 same as you have just described?

21 A I have no idea. I mean, I would guess  
22 that in other context, that the Census Bureau uses

1 the term margin of error differently. I'm saying  
2 in the context of this memo, I think the reference  
3 of margin of error is referring to that margin of  
4 inaccurate information in the ACS. That is what  
5 the Secretary was focused on in making his  
6 decision.

7 Q I'd like to turn your attention to  
8 001315, Page 3, the second full paragraph that  
9 begins "the Census Bureau."

10 A Uh-huh.

11 Q And the Census -- I'm sorry -- the  
12 sentence that reads, "However, neither the  
13 Census Bureau, nor the concerned stakeholders  
14 could document that the response rate would, in  
15 fact, decline materially."

16 Do you see that?

17 A I see that.

18 Q Can you tell me what you understand the  
19 word materially to mean?

20 A Yes. In that context, it's, basically,  
21 saying they could not, as I explained earlier,  
22 demonstrate that the decline because of the

1 addition of a citizenship question would be any  
2 greater than the decline that we already  
3 anticipated we would face because of the current  
4 political climate and people's concerns about  
5 government.

6 And, frankly, the folks bringing this  
7 lawsuit are contributing to that. We already  
8 anticipated this was going to be -- this census  
9 was going to be more difficult than other  
10 censuses, and that was a lot of the reasons behind  
11 some of the changes that were made in the  
12 lifecycle cost estimate. So we anticipated there  
13 were going to be hard-to-count populations, and  
14 many -- many of the same hard-to-count populations  
15 would have been disinclined to answer the census  
16 with or without a citizenship question.

17 Q When you say that the -- when you talk  
18 about the material decline, are you talking about  
19 the decline overall or are you talking about a  
20 differential decline depending on what demographic  
21 group is being discussed?

22 A If the data had shown conclusively that

1 the addition of a citizenship question would cause  
2 a material -- in other words, significant and  
3 major decline in any particular group, I'm sure  
4 the Secretary would have considered that quite  
5 carefully.

6 Q When the Secretary used the word material  
7 or phrase material decline, was he referring to  
8 any decline of any demographic group or was he  
9 referring to a decline across the board?

10 A Again, based on the subject of the  
11 discussion here, would there be a significant  
12 increase in the number of nonresponse follow-ups  
13 that we had to go do because people failed to  
14 respond? The data that was being presented did  
15 not isolate the citizenship question as being a  
16 material source of potential decline. There were  
17 a lot -- there was a lot of speculation that  
18 would, there was a lot of assertions it would.  
19 And upon review and analysis, it appears that many  
20 of the same populations that were already going to  
21 be difficult to count for lots of other reasons  
22 would be the same people who might be disinclined

1 because of citizenship. So you cannot say that  
2 adding citizen is going to materially increase the  
3 nonresponse follow-up rate.

4 Q Can you quantify what you mean by a  
5 material decline?

6 A Well, I mean, the Census Bureau,  
7 basically, under their best analysis, was saying  
8 that there might be a decline that would cause an  
9 increase of \$27 and a half million. In a  
10 \$15.6 billion budget, that is -- I mean, that's so  
11 far within the margin of error it's not even a  
12 fact.

13 Q Well --

14 A We could have a bad snow day that would  
15 cause bigger damage than that.

16 Q Was -- do you consider an undercount  
17 resulting from the addition of any question to the  
18 census of a quarter of a percentage point in a  
19 specific population to be material?

20 A I have no reason to believe the addition  
21 of a citizenship question would cause such a  
22 thing.

1           Q    Whether it does or not, I'm trying to  
2   quantify what you mean by material decline.  
3   How --

4           A    And, again, you're postulating a  
5   hypothetical. And my point is that in the absence  
6   of the context, would a quarter percent decline in  
7   response because we added a question that, for  
8   example, asked somebody their ethnicity, again,  
9   that's a weighing thing that the decision-maker  
10   has to make and say there may be a quarter percent  
11   decline, but it's important that we get ethnicity  
12   data.

13          Q    But I'm --

14          A    Same thing with gender, same thing with  
15   race, same. You know, lots of questions are added  
16   that may, in fact, result in a few people not  
17   answering the census.

18          Q    Well, now you're using the word a few  
19   people not answering the census. I'm looking at  
20   your language of material decline.

21          A    Uh-huh.

22          Q    Is a quarter percent decline in a

1 response of a demographic group a material decline  
2 in your estimation?

3 A Again, without context, I can't give you  
4 an answer. If that demographic group is composed  
5 of 100 people, it may not be --

6 Q What if the demographic is Hispanics?

7 A I don't know that -- well, again, no.  
8 That's a weighing question that the decision-maker  
9 is free to make.

10 Q Again, you're going back to weighing.  
11 I'm talking about the phrase declining material --  
12 materially. I'm not weighing it yet. You can  
13 weigh it later if you want. I'm just talking  
14 about one side of the balance that I think you're  
15 suggesting is being applied.

16 Is a quarter decline in response to the  
17 census among Hispanics a material decline in your  
18 estimation?

19 A The -- the -- I think the short answer  
20 is, the decline identified by -- the potential  
21 decline identified by the Census Bureau was not  
22 material enough to outweigh the benefits the

1 Secretary saw in adding the question.

2 Q It still doesn't answer my question.

3 A You're asking me to answer in a  
4 hypothetical, which I'm not going to do because I  
5 don't have the number of Hispanic voters. I don't  
6 know what 4 percent decline would represent. I --  
7 it's impossible for me to evaluate. I've never  
8 looked at the population numbers of Hispanics  
9 versus any other.

10 Q Well, you know that the number of  
11 Hispanics in American is in the tens of millions;  
12 is that correct?

13 A I honestly haven't really given it much  
14 thought.

15 Q Do you know if it's more than a million?

16 A I think it safe to say it's more than a  
17 million.

18 Q More than five million?

19 A I think so.

20 Q More than ten million?

21 A Let's see. If the population of the  
22 United States is 360 million, and I believe

1 Hispanic are somewhere in the 10, 12, 15 percent  
2 range, they're, obviously, well above that.  
3 They're like -- I don't know, like -- 79 million.

4 Q Of how many did you say?

5 A 70 -- I can't do the math that quickly,  
6 so let's say, whatever, 70 million. I don't know.

7 Q Let's use 70 million. So if there  
8 were -- let's make it easier, for my head. Let's  
9 say there was a 1 percent decline in response rate  
10 among Hispanics due to the inclusion of a question  
11 on the census, would you consider that a material  
12 decline?

13 A I would consider that a factor that you  
14 need to take into account.

15 Q And if it were a 3 percent decline, would  
16 you consider that even more of a factor?

17 A Three percent is greater than 1 percent,  
18 so, presumably, it would be greater. But, again,  
19 it depends on, again, what I'm deciding against.

20 Q Would you consider that material?

21 A That depends on the context.

22 Q The context of adding a question to the

1 census resulting in a 3 percent decline in  
2 responsiveness among Hispanics?

3 A All of the factors outlined in this memo  
4 are material. It's a question for the  
5 decision-maker to decide which are -- which to  
6 give greater or lesser weight to.

7 Q But the phrase here was material  
8 decline --

9 A And, again --

10 Q -- correct?

11 A -- in the context of conducting a  
12 nationwide census, the half percent change in  
13 response rates for NRFU was not something we  
14 considered material because there were lots of  
15 other factors that would cause an even greater  
16 decline.

17 Q And if the response rate was shown to be  
18 greater than a half percent decline, if it was  
19 shown to be a 3 percent decline?

20 MR. GARDNER: Objection. Calls for  
21 hypothetical.

22 THE WITNESS: I understand you're trying

1 to get a certain answer, but I'm just telling you  
2 in the context of this, in the context of this  
3 memo, the half percent increase in NRFU response  
4 rate was not material.

5 BY MR. ROSENBERG:

6 Q By the way, earlier you said that 30  
7 percent of noncitizen citizens answering the ACS  
8 citizenship question responded accurately. Do you  
9 recall that?

10 A That was data provided by the Census  
11 Bureau.

12 Q Okay. What, if any, evidence is there  
13 that noncitizens would respond to a citizenship  
14 question on the 2020 census questionnaire at a  
15 more accurate rate than they currently do on the  
16 ACS?

17 A That's -- I think we assumed in doing  
18 this that they would continue at that potential  
19 rate.

20 Q At a 30 percent inaccurate rate?

21 A Which is why you have to do both  
22 administrative records and put the question on.

1 You can't do just one or the other.

2 Q But the administrative records could be  
3 used with ACS; isn't that correct?

4 A No, they couldn't.

5 Q They could not be used --

6 A Because you can't extrapolate from the  
7 ACS to the whole population.

8 Q No. That wasn't my question.

9 The administrative records could be used  
10 in conjunction with the information from ACS?

11 A Again, you don't get an accurate sampling  
12 because you're extrapolating from the ACS to the  
13 larger population, so you can't apply your  
14 administrative records across in the same way.  
15 That's why the census was proposing to just use  
16 administrative records and they were prepared,  
17 apparently, to have to impute 25 million voting  
18 age citizen citizenship records. Now, on what  
19 basis, they would do that, we weren't sure.

20 Q But both Options C and D require some  
21 imputation; isn't that correct?

22 A Potentially, to get a complete and

1 accurate count, because we don't have 100 percent  
2 matching between the administrative records and  
3 the respondents. Yes. That's correct.

4 Q Let me draw your attention to the period  
5 around January 2018. Do you recall taking part in  
6 the signing of the list of 35 questions to the  
7 Census Bureau to answer?

8 A Yes. I helped prepare that list.

9 Q Do you -- who else helped prepare that  
10 list?

11 A The Secretary, Karen Dunn Kelley,  
12 James Uthmeier, myself. There may have been  
13 others.

14 Q Were you the prime drafter?

15 A Of that particular list, I may have been  
16 the prime assembler. I was not necessarily the  
17 prime drafter of all the questions.

18 Q And what was your purpose -- what was the  
19 purpose in proposing those questions?

20 A Basically, it has -- I think it was  
21 pointed out earlier we got an analysis from the  
22 Census Bureau that seemed to have a particular

1 viewpoint, and it wasn't well supported in some  
2 cases. So those are the questions that arose  
3 after reviewing their memo.

4 Q And when you -- after the questions were  
5 formulated, whom did you send them to?

6 A I believe they were sent to the  
7 Census Bureau.

8 Q And the idea was the Census Bureau would  
9 answer the questions; is that correct?

10 A They would provide that input, yes.

11 Q And you gave them a deadline, did you  
12 not?

13 A I imagine we did, yeah.

14 Q Four days; is that correct?

15 A I don't recall.

16 Q Was it your understanding that the  
17 answers were going to be provided solely by the  
18 Census Bureau to those questions?

19 A I believe all the questions were directed  
20 to the Census Bureau, but if they were directed to  
21 somebody else, then, obviously, they would provide  
22 them.

1           Q     But it was your understanding that the  
2     Census Bureau would answer them; is that correct?

3           A     Again, without going back and looking at  
4     the documents and the accompanying emails, I can't  
5     tell you exactly who it was. But my understanding  
6     was, yes, they were drafted for the Census Bureau.

7           Q     Did there come a time when you reviewed  
8     the answers for the questions?

9           A     I imagine there was.

10          Q     Well, was there?

11          A     Again, I know all of you are focused on  
12     this case and everything else. This was one small  
13     fraction of the work I was doing at that time. So  
14     I'm quite certain I reviewed the answers. Exactly  
15     when, I can't tell you. But, clearly, they  
16     went -- the responses to those questions were  
17     considered in the decision memo. So I, obviously,  
18     reviewed them at some point.

19          Q     Do you recall whether you reviewed those  
20     responses all at once or some kind of rolling  
21     basis?

22          A     If memory serves, I believe the Census

1       responded back to some, and then provided  
2       follow-up answers to others that took more time.

3           Q     Do you recall whether in connection with  
4       any of the questions the Census Bureau was asked  
5       to change their answers to any questions?

6           A     I believe -- well, I believe in one case,  
7       they provided a response that indicated that there  
8       was a very set format for putting questions on the  
9       census. And we went back to them and said, how  
10      can that be? You haven't -- there hasn't been a  
11      question added to the long form? They went back  
12      and reviewed and said, yes, that's correct. This  
13      was the process we used for the ACS.

14          Q     Let me -- let's have this marked as 31.

15                 (Plaintiffs' Exhibit 31, Questions on  
16      draft Census memo, was marked.)

17      BY MR. ROSENBERG:

18          Q     Showing you what's been marked as --

19                 MR. GARDNER: Ezra, we need a --

20                 MR. ROSENBERG: Can you give me one more  
21      copy?

22                 I just need one. Thank you.

1 BY MR. ROSENBERG:

2 Q Showing you what's been marked as  
3 Exhibit 31, have you ever seen this document  
4 before?

5 A Again, I'd have to go back and check  
6 emails. It appears to be an incomplete response  
7 to the 35 questions.

8 Q And when you say it's an incomplete  
9 response to the 35 questions, why do you say that?

10 A Well, Question 4 is not answered.  
11 Question 9 is not answered. Question 11 is not  
12 answered. Question 15 is not answered.  
13 Question 20 is not answered. Question 27 is not  
14 answered. It appears to be -- I'm not sure that's  
15 the entire list, but some of that -- some of  
16 these -- obviously, it's not a final, because at  
17 least five questions are unanswered, so --

18 Q Let's have this marked as -- one question  
19 on that. Turning our attention to Question 31 --

20 A Okay.

21 Q -- is that the question you were  
22 referring to before as a question whose answer was

1 changed at some point?

2 A Yeah. Because this was -- as I said,  
3 when we explored the question further, it became  
4 evident that this was not, in fact, an accurate  
5 representation for the process for the decennial.

6 Q Do you know when that answer was changed?

7 A I don't.

8 Is there a date on this?

9 Q We just give you them as we got them.

10 A No. Well, no, unfortunately nobody dated  
11 this. So I don't know -- is there a -- do you  
12 have a final --

13 Q Well --

14 A -- with all the questions answered?

15 Q You're going to have to tell me.

16 A I believe there was one where they  
17 managed to answer all the questions.

18 Q Okay. Let's have this marked as the next  
19 exhibit.

20 (Plaintiffs' Exhibit 32, Memo, was  
21 marked.)

22 BY MR. ROSENBERG:

1           Q     Can you identify -- first of all, have  
2     you ever seen what's been marked as Exhibit 32?

3           A     I'm flipping through it here. I believe  
4     I've seen -- I can't recall for certain whether  
5     this was the document, but I've seen, certainly,  
6     something similar to the document, yes.

7           Q     And the last part of this document, I  
8     know it's a multi-document document --

9           A     Right.

10          Q     -- does have the 35 questions, all of  
11     which are answered; is that correct?

12          A     On a quick review, it looks like you're  
13     correct, that they're all answered.

14          Q     And the answer to Question 31 is the same  
15     answer as was in Comstock Exhibit 31; is that  
16     correct?

17          A     Correct. But I note this is also marked  
18     draft and predecision, so --

19          Q     So -- well, let's deal with that, also.  
20     We can represent to you that this is the only  
21     version of the March -- of a document dated  
22     March 1, 2018 that is -- and it's -- and they're

1 all marked draft for decisional -- I can't read  
2 the whole watermark.

3 A Right.

4 Q Are you aware whether there was a  
5 document that does not contain that stamp or  
6 watermark?

7 A I don't recall.

8 Q And that is dated March 1, 2018; is that  
9 correct?

10 A Correct.

11 Q Now, let me show you -- let me get this  
12 marked as Exhibit 33.

13 (Plaintiffs' Exhibit 33, Questions on  
14 draft Census memo, was marked.)

15 BY MR. ROSENBERG:

16 Q Have you seen that document before?

17 A Again, possible. I can't tell from  
18 the -- without the accompanying emails to show the  
19 traffic back and forth. I honestly can't tell you  
20 when I would have seen which of these documents.

21 Q Now, do you know whether what's been  
22 marked as Document 33 is the final iteration of

1 the answers to the questions?

2 A I don't honestly know that.

3 Q Now, turning your attention to the answer  
4 to 31 --

5 A Uh-huh.

6 Q -- does that answer reflect a change in  
7 the answer from the previous documents I've shown  
8 you?

9 A Yes. It reflects a more accurate  
10 statement of the response to the question.

11 Q Who drafted that answer?

12 A I don't know.

13 Q Do you know if the Census Bureau drafted  
14 that answer?

15 A It would appear to be since it's a Census  
16 document.

17 Q Who is Christa Jones?

18 A She's is the chief of staff for the  
19 Census Bureau.

20 Q Who is Sahra Park-Su?

21 A Sahra Park-Su works in the Office of  
22 Policy and Strategic Planning -- or actually did.

1 She is now at Bureau of Industry and Security.

2 Q Did she work for you, report to you, I  
3 should say?

4 A Yes.

5 Q What was her title?

6 A She doesn't really have a title. She's  
7 one of the staff that covers an area in the Office  
8 of Policy Planning.

9 Q Was she involved in review of the answers  
10 to 35 -- to the 35 questions?

11 A I don't know.

12 Q Did you task her with that?

13 A I did not, no.

14 Q Do you know if anyone did task her with  
15 that?

16 A I don't know.

17 Q Let's have this exhibit marked as 34.

18 (Plaintiffs' Exhibit 34, Email, was  
19 marked.)

20 BY MR. ROSENBERG:

21 Q Looking at what's been marked as  
22 Exhibit 34, have you ever seen this document

1 before?

2 A No. I haven't.

3 Q And does it appear to be an email from  
4 Sahra that contains the Question 31, "What was the  
5 process that was used in the past to get questions  
6 added to the decennial census or do we have  
7 something similar where precedent was  
8 established"?

9 Do you see that?

10 A That appears to be Question 31.

11 She pronounces her name Sahra, by the  
12 way.

13 Q I'm sorry?

14 A She pronounces her name Sahra.

15 Q Sahra?

16 A Yes.

17 Q Okay. Do you see what has been blocked  
18 out below that question?

19 A I see that there is a block of black  
20 below the question, yes.

21 Q And do you see that that block, if you  
22 compare it to the Exhibit C33, the answer, that

1     that block seems to be about the same size as the  
2     amended answer in C -- in C34?

3           A     You're comparing -- I don't know. It  
4     depends on the font size being used.

5           Q     Do you doubt that Sahra Park-Su may have  
6     been the one who wrote the answer to Question 31?

7           MR. GARDNER: Objection. Calls for  
8     speculation. Lack of foundation.

9           THE WITNESS: I was -- as you'll note,  
10    I'm not on this email chain, so I don't know who  
11    was involved in the drafting change.

12   BY MR. ROSENBERG:

13          Q     Can you deny the possibility that she  
14    wrote the answer to 31?

15          A     I -- that's certainly possible.

16          MR. ROSENBERG: We'll go off the record.

17          VIDEOGRAPHER: This concludes Media Unit  
18    Number 6. The time on the video is 4:48 p.m. We  
19    are off the record.

20                (Off the record.)

21          VIDEOGRAPHER: This begins Media Unit  
22    Number 7. The time on the video is 5:05 p.m. We

1 are on the record.

2 EXAMINATION BY MS. SENTENO:

3 Q Good afternoon, Mr. Comstock. My name is  
4 Andrea Senteno and I'm counsel for the plaintiffs  
5 in the LUPE v. Ross. That's in the Federal  
6 District court in Maryland 8:18-CV-01570. And  
7 LUPE stands for La Unión Del Pueblo Entero.

8 So I know we've talked a bit today about  
9 your interactions with Mary Blanche Hankey and  
10 with James McHenry, so I just have a couple  
11 questions on that.

12 Do you understand correctly that it was  
13 based on your description of -- of the  
14 Department of Commerce's request to add the  
15 citizenship question that Ms. Hankey told you that  
16 it would be best appropriate to speak to  
17 Mr. McHenry?

18 MR. GARDNER: Objection. Form.

19 THE WITNESS: Yes. I don't know that I  
20 went into great detail with her as to the nature  
21 of the citizenship question, but as to who in the  
22 department would handle Voting Rights Act and

1 citizenship questions.

2 BY MS. SENTENO:

3 Q So you did specifically ask who would  
4 best be the appropriate -- who would be the most  
5 appropriate person if you wanted to talk about the  
6 Voting Rights Act and citizenship data?

7 A The use of the citizenship data by the  
8 Justice Department, yes.

9 Q And based on that interaction, she  
10 referred you to Mr. McHenry?

11 A Correct.

12 Q Okay. And do you understand correctly  
13 that it was based upon that conversation or that  
14 explanation with respect to the Department of  
15 Commerce's request with Mr. McHenry that he then  
16 referred you to the Department of Homeland  
17 Security?

18 A I don't know why he referred me to the  
19 Department of Homeland Security. He simply -- I  
20 think, as I indicated before, indicated that the  
21 Justice Department was a little busy on other  
22 issues right now, and so this was not something

1     that high on their priority list.

2           Q     And I know we've talked about this  
3     before, but when you spoke with Mr. McHenry, did  
4     you relay the same information that you'd relayed  
5     to Ms. Hankey about wanting to talk about the  
6     voting rights after voting rights enforcement and  
7     citizenship -- and the use of citizenship data?

8           A     In both cases, I spoke to them about  
9     adding a citizenship question to the decennial  
10    census. I don't recall whether we went into any  
11    great detail about the rationale.

12          Q     Did you ever have a conversation with  
13    Donald Trump regarding the addition of the  
14    citizenship question to the decennial census form?

15          A     No.

16          Q     And that includes during any transition  
17    period?

18          A     Correct.

19          Q     I want to introduce Exhibit -- I believe  
20    we said 35, Plaintiff's Exhibit 35 for the record.

21                (Plaintiffs' Exhibit 35, Trump campaign  
22    email, was marked.)

1 BY MS. SENTENO:

2 Q This is Bates number 2643. And this is  
3 an email that contains a Trump campaign email from  
4 March 2008.

5 Have you been shown this email prior to  
6 today?

7 A No. I'm not on this email.

8 Q Okay. Can I refer you to Page 2644?  
9 It's the second page of this document.

10 A Okay.

11 Q Okay. And do you see what it has  
12 included in the original email chain. This is an  
13 image of a campaign email from the Trump campaign,  
14 correct?

15 MR. GARDNER: Objection. Lack of  
16 foundation.

17 THE WITNESS: It's rather small print,  
18 but it appears to be something from the campaign,  
19 yes.

20 BY MS. SENTENO:

21 Q Okay. And I'm going to recognize it's  
22 small print, but I'm going to draw your attention

1 to the first sentence here of the campaign email,  
2 quote, the President wants the 2020 United States  
3 census to ask people whether or not they are  
4 citizens.

5 In continues, in another era this would  
6 be common sense. And common sense is in all  
7 capital letters.

8 Do you see that?

9 A I do see that.

10 Q And you said you were never made aware of  
11 this campaign email; is that correct?

12 A No. I said I had not seen this email.

13 Q You had not seen this particular chain?

14 A I had not seen this chain or the  
15 substance of this -- whatever it is.

16 Q Prior to today?

17 Okay. So no one -- so this was looking  
18 at 2643 --

19 A Okay.

20 Q -- this image, this stamp of the campaign  
21 email was sent to Kevin Manning. Who is  
22 Kevin Manning?

1           A     Kevin Manning works in our office of --  
2     Office of Public Affairs.

3           Q     Okay. And Kevin Manning has forwarded  
4     this email to James Rockas; is that correct?

5           A     Correct. Well, yes. Based on the email  
6     chain, correct.

7           Q     And I believe we've already established  
8     who James Rockas is, but perhaps, again, just  
9     remind us.

10          A     Well, as his title at the bottom says,  
11     press secretary, deputy director public affairs.

12          Q     Okay. So were you ever made aware of  
13     this email by either Mr. Manning or Mr. Rockas?

14          A     Mr. Rockas mentioned to me there had been  
15     a campaign email, yes.

16          Q     Okay. And did you ever -- did anyone  
17     else make you aware of this email?

18          A     I think James Uthmeier or Peter Davidson  
19     may have mentioned it. We were all surprised to  
20     see this email.

21          Q     Okay. When were you made aware of the  
22     email?

1           A     Shortly after Mr. Rockas received a copy.

2           Q     Okay. And why were you made aware of  
3 this particular email?

4           A     Well, as you notice, the email is from  
5 somebody at Federal Computer Week who apparently  
6 got a copy of this and sent it to us to ask for  
7 comment, does Commerce have any response to this,  
8 and this was, to my knowledge, the first we'd ever  
9 seen it.

10          Q     You said you were surprised or everyone  
11 was surprised to have seen or made aware of this  
12 campaign email. Can you describe for me why you  
13 were surprised?

14          A     Because we've never spoken to the  
15 campaign about the Secretary's thinking or  
16 decision, so -- I'm not sure what the date of this  
17 is, but, 3/19.

18          Q     After you all were made aware of this  
19 email, did you discuss the campaign email with  
20 anyone else inside the Department of Commerce?

21          A     No.

22          Q     Did you discuss this email with anyone at

1 the White House?

2 A No.

3 Q Did you discuss this email with anyone at  
4 Trump campaign?

5 A No.

6 Q Did you discuss this email with anyone at  
7 the Department of Justice?

8 A No.

9 Q Did you discuss this email with anyone at  
10 the Census Bureau?

11 A No.

12 Q The flyer also refers to -- and this is  
13 on 2644 -- "19 attorney generals who said they  
14 will fight Trump if the President dares to ask  
15 people if they are citizens."

16 Do you know who those 19 attorney  
17 generals are?

18 A I have no idea.

19 Q And do you know what, quote, unquote, era  
20 this campaign email is referring to when he says  
21 in another era?

22 A I have no knowledge, other than reading

1     this email now what the campaign was thinking  
2     about.

3           Q     Okay. Do you agree with the sentiments  
4     in this campaign email?

5           A     Do I agree that asking citizenship -- a  
6     citizenship question makes sense? Is that your  
7     question?

8           Q     If that's what you understand the  
9     sentiment of this email to be? What do you  
10    understand the sentiment of this email to be?

11          A     I said I worked on the Secretary's  
12    decision to do this, and I am comfortable with the  
13    Secretary's decision.

14          Q     So this was a request for media comment,  
15    and you stated earlier that after you all were  
16    made aware of this email and you all expressed  
17    your surprise that the email existed, you didn't  
18    discuss it any further?

19          A     I mean, I'm not sure what our final  
20    response to press was, but I think we had no  
21    comment.

22          Q     Who would know what the final response to

1 the press was?

2 MR. GARDNER: Objection. Lack of  
3 foundation.

4 THE WITNESS: Well, I'd say if it's  
5 not on -- if it's not published on our website and  
6 it's not quoted in media paper anywhere, then it  
7 appears we did not respond.

8 BY MS. SENTENO:

9 Q Would this be something that would be  
10 raised to Secretary Ross directly?

11 MR GARDNER: Objection. Lack of  
12 foundation. Calls for speculation.

13 THE WITNESS: Certainly the answer would  
14 be that the Secretary would probably be made aware  
15 that the press were inquiring on this, yes.

16 BY MS. SENTENO:

17 Q Would he be made aware of the fact that  
18 this email existed?

19 A Sure. I mean, he would be made aware of  
20 the fact we had received an inquiry from the press  
21 with the following email on it.

22 Q Do you know if Secretary Ross saw this

1 campaign email?

2 A I can't say for certain.

3 Q Do you know of anyone else at  
4 Department of Commerce or the Census Bureau that  
5 discussed this campaign email?

6 A Well, James Rockas, I image, would have  
7 presented to it the Secretary and asked him if he  
8 had a response or further we'd make no response.

9 Q So would the best person to ask about the  
10 Secretary's knowledge about this particular email  
11 be the Secretary?

12 A That would be the person that could  
13 probably best answer your question, yes.

14 Q Do you know if anyone in Department of  
15 Commerce or the Census Bureau discussed this email  
16 with the White House?

17 A Again, I don't know. You'd have to ask  
18 James Rockas. But absent something else in the  
19 administrative record that shows that there was  
20 correspondence with the White House, I think we'd  
21 probably just ignored this.

22 Q And so do you know of anyone at the

1 Department of Commerce or the Census Bureau who  
2 discussed this with the Trump campaign?

3 A I don't, no.

4 Q And what was your understanding when you  
5 were made aware of this email of the President's  
6 rationale for needing a citizenship question on  
7 the decennial census?

8 MR. GARDNER: Objection. Calls for  
9 speculation. Lack of foundation.

10 THE WITNESS: I have no knowledge of the  
11 President's interest or rationale on this  
12 question.

13 BY MS. SENTENO:

14 Q What was your understanding of President  
15 Trump's directive to the Department of Commerce  
16 based on this email?

17 MR. GARDNER: Objection. Calls for  
18 speculation. Lack of foundation.

19 THE WITNESS: And to my knowledge,  
20 President Trump never gave any directive to the  
21 Department of Commerce.

22 BY MS. SENTENO:

1           Q     And what was your understanding, sorry,  
2     of the President's role in the determination of  
3     whether or not to add a citizenship question to  
4     the decennial census form?

5           A     My understanding was the President had no  
6     role.

7           Q     Did you ever discuss -- did you ever  
8     discuss with anyone in the White House other  
9     topics outside of the census, such as immigration  
10    enforcement?

11          A     I did not, no.

12          Q     Have you ever discussed immigration  
13    enforcement with President Trump, the issue of  
14    voter fraud?

15          A     No.

16          Q     Have you ever discussed with him the  
17    issue of an undercount as a result of the  
18    citizenship question?

19          A     No.

20          Q     How about Congress apportionment?

21          A     No.

22          Q     How about redistricting?

1 A No.

2 Q Section 2 of the VRA?

3 A No.

4 Q Okay. Did you ever have a conversation  
5 with Reince Priebus?

6 A No.

7 Q Are you aware of anyone in the Department  
8 of Commerce or the Census Bureau that had a  
9 conversation with Mr. Priebus?

10 A Regarding?

11 Q Regarding the census.

12 A I'm not aware of any specific  
13 conversation regarding the census, no.

14 Q Are you aware of anyone at the  
15 Department of Commerce or the Census Bureau that  
16 had a conversation with Mr. Priebus about  
17 immigration enforcement?

18 A Not that I'm aware of.

19 Q About voter fraud?

20 A Not that I'm aware of.

21 Q About an undercount as a result of a  
22 citizenship question?

1 A Not that I'm aware of.

2 Q About Congress apportionment?

3 A Not that I'm aware of.

4 Q About redistricting?

5 A Not that I'm aware of.

6 Q About Section 2 of the VRA?

7 A Not that I'm aware of.

8 Q Did you ever have a conversation with  
9 White House Chief of Staff John Kelly about the  
10 census?

11 A No.

12 Q Are you aware of anyone else at the  
13 Department of Commerce or the Census Bureau that  
14 had a conversation with Chief of Staff John Kelly  
15 about the census?

16 A No.

17 Q About immigration enforcement?

18 A No.

19 Q About voter fraud?

20 A No.

21 Q About an undercount as a result of a  
22 potential citizenship question?

1 A No.

2 Q About Congressional apportionment?

3 A No.

4 Q Redistricting?

5 A No.

6 Q Or about Section 2 of the VRA?

7 A No.

8 Q Did you ever have a conversation with  
9 Arthur Gary regarding the addition of the  
10 citizenship question to the decennial census form?

11 A No.

12 Q Are you aware of anyone else at the  
13 Department of Commerce or the Census Bureau that  
14 had conversations with Mr. Gary?

15 A I believe Peter Davidson may have.

16 Q And are you familiar with who Mr. Gary  
17 is?

18 A I believe he's the person that wrote the  
19 letter.

20 Q When did you learn about your -- about  
21 the conversations between Mr. Davidson and  
22 Mr. Gary?

1           A     I believe I would have heard -- to the  
2     extent they occurred, I likely would have heard  
3     about it when he was telling -- informing the  
4     Secretary he spoke with Mr. Gary.

5           Q     A general time frame?

6           A     I couldn't tell you.

7           Q     Would it have been before the  
8     December 2017 letter?

9           A     I don't -- I don't recall.

10          Q     Would it have been after the  
11     December 2017 letter?

12          A     Possibly. Because I know there were  
13     discussions about trying to get a meeting between  
14     the Census Bureau and the DOJ, and DOJ was not  
15     interested in that letter.

16          Q     So you're not aware of anyone other than,  
17     potentially, Mr. Davidson that had a conversation  
18     with Mr. Gary prior to his letter to the  
19     Census Bureau?

20          A     No.

21          Q     Do you know if the conversations between  
22     Mr. Davidson and Mr. Gary took place in person or

1 by phone?

2 A Again, I -- there may have been  
3 conversations between Mr. Davidson and Mr. Gary.  
4 I'm not certain that there were.

5 Q Who would know that there were?

6 A Mr. Gary.

7 Q And what was your understanding of what  
8 the conversations between Mr. Davidson and  
9 Mr. Gary were about?

10 A Again, I'm not certain that conversations  
11 occurred. If they occurred, as I said, my  
12 recollection would be it came up in the context of  
13 trying to get the meeting that Census Bureau was  
14 asking.

15 Q And did those meetings ever occur?

16 A Not to my knowledge.

17 Q Do you know why?

18 A I don't know why. The Justice Department  
19 did not want to do the meetings.

20 Q When you say the department -- I'm sorry  
21 could you repeat?

22 A I said I do not know why the

1 Justice Department was unavailable for those  
2 meetings.

3 Q Was there ever any follow-up to inquire  
4 why Department of Justice was not available for  
5 meetings with the Census Bureau?

6 A As I said, that's why I believe  
7 Peter Davidson may have spoken with Mr. Gary.

8 Q Have ever you discussed with Mr. Gary the  
9 issue of immigration enforcement?

10 A No.

11 Q Have you ever -- has -- have you or  
12 anyone else in the Department of Commerce  
13 discussed with Mr. Gary the issue of voter fraud?

14 A No.

15 Q The issue of an undercount as a result of  
16 the citizenship question?

17 A Again, not to my knowledge.

18 Q The issue of Congressional apportionment?

19 A Again, not to my knowledge.

20 Q Issue of redistricting?

21 A Not to my knowledge.

22 Q Section 2 of the VAR?

1           A     Again, that's the section that they would  
2     need the information for, so I think any  
3     conversation with the Justice Department -- to the  
4     extent it reached the Voting Rights Act, would  
5     have been referring to Section 2.

6           Q     Forgive me if you answered this question  
7     earlier, but did you -- did you yourself ever have  
8     a conversation with the Attorney General -- with  
9     Attorney General Jeff Sessions -- sorry --  
10    regarding the addition of a citizenship question  
11    to the decennial census?

12          A     I personally did not speak to him  
13    directly about that matter.

14          Q     Did you speak to him through other  
15    individuals?

16          A     No.

17          Q     Have you -- did you say that you -- is it  
18    my understanding from your testimony that you  
19    didn't speak directly to the Attorney General  
20    about the citizenship question?

21          A     I've never spoken directly to the  
22    Attorney General about the citizenship question.

1 Q Okay. Have you ever spoken with the  
2 Attorney General about immigration enforcement?

3 A No.

4 Q About voter fraud?

5 A No.

6 Q About an undercount as a result of the  
7 citizenship question?

8 A No.

9 Q About Congressional apportionment?

10 A No.

11 Q About redistricting?

12 A No.

13 Q About Section 2 of the VRA?

14 A No.

15 Q Okay. Are you aware of anyone in the  
16 Department of Commerce who has had direct  
17 conversation with the Attorney General,  
18 notwithstanding Secretary Ross?

19 A Other than Secretary Ross, I'm not sure  
20 that anybody has spoken directly with the Attorney  
21 General.

22 Q Okay. Are you aware of the

1 Attorney General's views on asking a citizenship  
2 question on the decennial census?

3 A I'm not aware of the Attorney General's  
4 view -- Attorney General's views.

5 Q On?

6 A On a citizenship question on the census.

7 Q Are you aware of his views on immigration  
8 enforcement?

9 A Other than what you read in the press,  
10 no.

11 Q Are you aware of his views on the program  
12 called Deferred Action For Childhood Arrivals?

13 A Again, other than what's in the press, I  
14 don't know anything about what his views are.

15 Q So the views that you do know of the  
16 Attorney General, you learned through the media?

17 A Media reports, yes.

18 Q And approximately when are you learning  
19 those? When did you begin reading media reports  
20 about the Attorney General's specific viewpoints?

21 A I stay abreast in most papers, so the  
22 Washington Post, the Wall Street Journal. I have

1 a general knowledge of the issue, but no specific  
2 interests. The Department of Commerce doesn't do  
3 immigration enforcement, so --

4 Q Did you believe at the time of the DOJ  
5 letter to the Census Bureau that the  
6 Attorney General was committed to the enforcement  
7 of the Voting Rights Act but that his hindrance or  
8 the hindrance of the DOJ was the availability of  
9 data?

10 MR. GARDNER: I'm sorry. Can you repeat  
11 that question?

12 MS. SENTENO: Yeah.

13 BY MS. SENTENO:

14 Q Did you believe at the time of the DOJ  
15 letter, that the Attorney General was committed to  
16 the enforcement of the Voting Rights Act but that  
17 what was holding them up was -- were data issues?

18 A Their letter communicated that they could  
19 use census block-level data, which they currently  
20 don't get for that, and if, therefore, we would  
21 add a question to the decennial census that would  
22 provide that data.

1 Q Have you ever had a conversation with  
2 Stephen Miller regarding the addition of the  
3 citizenship question to decennial census?

4 A No.

5 Q Do you know who Stephen Miller is?

6 A I do know who Stephen Miller is.

7 Q Could you tell us who that is?

8 A He's a policy advisor to the President.

9 Q And have you ever asked -- have you ever  
10 had a discussion with Mr. Miller about immigration  
11 enforcement, voter fraud, and undercount as a  
12 result of the citizenship question, Congressional  
13 apportionment, redistricting or Section 2 of the  
14 VRA?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: No. I have not.

17 BY MS. SENTENO:

18 Q Are you aware of anyone at the  
19 Department of Commerce who has had conversations  
20 with Mr. Miller about those topics?

21 A No.

22 Q Are you aware of Mr. Miller's views on

1 immigration?

2 A Not specifically, no.

3 Q The census?

4 A Not specifically, no.

5 Q On apportionment?

6 A Not specifically, no.

7 Q On Deferred Action for Childhood  
8 Arrivals?

9 A Not specifically, no.

10 Q Have you ever had a conversation with  
11 Alabama Attorney General Steve Marshall regarding  
12 the addition of a citizenship question to the  
13 decennial census form or about the census  
14 generally?

15 A No.

16 Q Do you know of anyone at the  
17 Department of Commerce or the Census Bureau who  
18 has had a conversation with Attorney General  
19 Steve Marshall?

20 A Are they --

21 Q Alabama. Sorry.

22 A Are they the ones bringing the lawsuit

1     against us?

2           Q     Yes.

3           A     No. I don't think so.

4           Q     And you've never -- have you ever had a  
5     conversation with Mr. Marshal about voter fraud,  
6     undercount as a result of the citizenship  
7     question, Congressional apportionment,  
8     redistricting or Section 2 of the VRA?

9           A     I've never spoken to Mr. Marshall.

10          Q     Are you aware of anyone at the Department  
11     of Commerce who has?

12          A     Not that I know of.

13          Q     Have you ever had a conversation with  
14     Alabama Congress member Mo Brooks?

15          A     No.

16                 Well, I take that back. Unless he's been  
17     on some panel that's -- that I testified in front  
18     of. It's entirely possible, in that case, I would  
19     have had a conversation with him.

20          Q     Okay. So you've never had a conversation  
21     with him outside of a potential panel about  
22     anything generally or just about the census or the

1 citizenship question?

2 A I feel fairly confident I have not spoken  
3 with Mr. Brooks about any subject matter.

4 Q Are you aware of anyone at the  
5 Department of Commerce or Census Bureau who has --

6 A Again, no.

7 Q -- had a conversation?

8 A No.

9 Q Okay. Outside of the Department of  
10 Commerce and the Census Bureau and individuals  
11 that I just ran through, have you or anyone else  
12 at the Department of Commerce spoken to anyone  
13 outside of your agency prior to the DOJ letter  
14 about the citizenship question?

15 MR. GARDNER: Objection. Lack of  
16 foundation.

17 THE WITNESS: Again, I can only answer  
18 for myself. So I wouldn't know what other people  
19 might or might not have spoken to people outside  
20 the department on.

21 BY MS. SENTENO:

22 Q Did you ever speak to anyone from the

1 Heritage Foundation?

2 A No.

3 Q You never spoke to anyone at the  
4 Heritage Foundation about the census?

5 A Not that I recall.

6 Q And you never spoke to anyone at the  
7 Heritage Foundation about the potential -- about  
8 apportionment?

9 A Not that I recall, no.

10 Q How about voter fraud?

11 A No.

12 Q Congressional apportionment -- sorry. I  
13 just said that.

14 Section 2 of the VRA?

15 A No.

16 Q Okay. Are you aware of anyone else at  
17 the Department of Commerce or the Census Bureau  
18 that at any point, either before or after the DOJ  
19 letter -- the DOJ letter, who had a conversation  
20 with someone we had not already discussed about  
21 the purpose of adding a citizenship question for  
22 immigration enforcement?

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: I'm not aware of any  
3 conversations regarding adding a citizenship  
4 question for immigration enforcement.

5 BY MS. SENTENO:

6 Q How about voter fraud?

7 A No.

8 Q Congressional apportionment?

9 A No.

10 Q Redistricting?

11 A No.

12 I mean, I will note there was an earlier  
13 conversation about that Wall Street Journal  
14 article that mentioned -- that referenced  
15 apportionment. So outside of that response with  
16 the Secretary, there's never been a discussion of  
17 it.

18 Q Have you spoken to anyone at  
19 Department of Justice's voting rights section?

20 A Not to my knowledge.

21 Q So you were never referred to anyone or  
22 you never inquired from anyone, a contact within

1 the voting rights section, to discuss this  
2 request --

3 MR. GARDNER: Objection. Form.

4 BY MS. SENTENO:

5 Q -- for a citizenship question?

6 MR. GARDNER: Sorry. Objection to form.

7 THE WITNESS: No. Again, as I think we  
8 established in the earlier testimony, I was  
9 referred to Mary Blanche Hankey by someone in the  
10 Department of Commerce, by Eric Branstad, who I  
11 think got her name from a contract of his at the  
12 White House. She referred me to -- I'm already  
13 blanking on his name -- John McHenry. I did not  
14 investigate John McHenry's position in the  
15 department. I just took it on face value he would  
16 be the right person to talk to and those are the  
17 two people I spoke to at Department of Justice,  
18 so -- outside of litigation counsel, obviously.

19 BY MS. SENTENO:

20 Q You testified earlier in the memo that  
21 you drafted for the Secretary that stated that  
22 once you had been told by DHS that your request

1 would be more appropriately handled by the  
2 Department of Justice, you said that the  
3 interaction ceased; is that correct?

4 A Well --

5 Q From you?

6 A My efforts at that point to track down  
7 somebody ceased because they had run into a dead  
8 end. I mean, our initial conclusion was that  
9 Department of Justice was the right place to go.  
10 They seemed occupied on other matters, so they  
11 referred us to DHS. DHS referred us back, so now  
12 I'm back to where I started.

13 Q So once you were referred back to DOJ,  
14 you didn't ask another follow-up as to who in the  
15 voting section would be more appropriate to talk  
16 about this particular issue?

17 A Again, I was working on literally dozens  
18 of issues that consumed a lot of time. And so I  
19 had put the time into it that I could afford to  
20 put into it and had come up empty. So I reported  
21 that to my boss, and basically, said if absent  
22 some instruction from higher up, it appears that

1 the DOJ staff is not particularly interested in  
2 expending resources on this right now.

3 Q Did you or Secretary Ross consider having  
4 anyone else, any other governmental department or  
5 any other jurisdiction make a request to the  
6 Census Bureau to add a citizenship question --

7 MR. GARDNER: Objection.

8 BY MS. SENTENO:

9 Q -- other than the DOJ and DHS?

10 MR. GARDNER: Objection. Form. And  
11 objection. Foundation.

12 THE WITNESS: Again, nobody would make a  
13 request to the Census Bureau to add it because the  
14 statute commits that discretion to the Secretary,  
15 not the Census Bureau. So it's not their decision  
16 to make. It's the Secretary's decision to make.  
17 So we would not seek someone else to contact the  
18 Census Bureau about the question, no.

19 BY MS. SENTENO:

20 Q But the DOJ letter was directed to the  
21 Census Bureau requesting an addition of the  
22 question?

1           A     I did not draft that letter, so I -- but  
2     their choice of who to send the request to was  
3     dictated by the Department of Justice, not by us.

4           Q     Did you or Secretary Ross consider having  
5     anyone else make -- anyone else, other than the  
6     DOJ to DHS, to make that request to Commerce?

7           MR. GARDNER:   Objection.   Lack of  
8     foundation.

9           THE WITNESS:   No.   I think upon further  
10    analysis, we determined that the Secretary  
11    probably could determine that Commerce had a need  
12    for it, but that was not before us at the time,  
13    so --

14   BY MS. SENTENO:

15           Q     Can you explain your subsequent research?

16           A     Well, as I mentioned, the United Nations  
17    recommends that all countries ask, frankly, rather  
18    detailed questions about citizenship,  
19    naturalization, et cetera.   So it's considered  
20    good practice, good demographic information to  
21    have.   It was asked for 150-plus years without any  
22    problem.   So -- and every other major democracy

1     inquires of all their citizens on a regular basis  
2     of it. So it's -- I think there's a perception  
3     out there -- where it came from, I don't know --  
4     that somehow asking a citizenship question is a  
5     problem.

6             And I would, again, refer you back to the  
7     fact that 70 percent of the noncitizens in the ACS  
8     actually answer the question correctly. So,  
9     apparently, those people don't consider it a  
10    problem. So it appears to be a rather small  
11    demographic that is concerned about this. And  
12    again, I would point out that when you understand  
13    that the data that is being protected by law,  
14    cannot be used for any enforcement purpose, cannot  
15    be used to identify an individual, there's  
16    absolutely no reason I can think of why someone  
17    would not answer the census honestly on that,  
18    citizen or noncitizen. It's demographic  
19    information.

20            Q     So based on that, was it your  
21    understanding that if the DOJ did not make this  
22    request to the Department of Commerce or the

1 Census Bureau, whoever was the most appropriate  
2 point of contact for that request, was it your  
3 understanding that the Department of Commerce  
4 might move forward with a plan to add the  
5 citizenship question based on --

6 MR. GARDNER: Objection.

7 BY MS. SENTENO:

8 Q -- that rationale?

9 MR. GARDNER: Sorry. Objection.  
10 Hypothetical.

11 THE WITNESS: Right. It's a hypothetical  
12 question that was not before us.

13 BY MS. SENTENO:

14 Q Okay. Did Secretary Ross tell you or  
15 anyone else whether he would have pursued other  
16 justifications for adding the citizenship  
17 question?

18 MR. GARDNER: Objection.

19 THE WITNESS: We had a request --

20 MR. GARDNER: Lack of foundation.

21 THE WITNESS: -- from the

22 Justice Department, so there was no need to

1 speculate on that.

2 BY MS. SENTENO:

3 Q Okay. Are you aware of any VRA cases  
4 that the Department of Justice declined to bring,  
5 only because they needed block-level citizenship  
6 data?

7 A I'm not aware of that, but I didn't  
8 research that either.

9 Q So no -- neither yourself or anyone else  
10 at the Department of Commerce asked DOJ for this  
11 information?

12 A I did not. I can't say whether anybody  
13 else did.

14 Q So -- just a couple more questions.  
15 The ACS is not a head count, correct?

16 A That's right. It's a sample.

17 Q But the decennial census is a head count,  
18 correct?

19 A That's correct. Counts all persons.

20 Q And a decrease in the response rate in  
21 the citizen question on the 2016 ACS caused an  
22 underestimate of the percent of noncitizens; is

1     that correct?

2           A     No.   That's not correct.

3           Q     Can you explain?

4           A     Well, you're asserting that it's because  
5     of the citizenship question, and I'm not sure that  
6     the data supports that statement.

7           Q     What are you -- what do you believe the  
8     data supports?

9           A     Again, without the data sitting in front  
10    of me, it would be hard to make an analysis.   But  
11    basically, the Census Bureau has reported that  
12    certain number of people may drop off at certain  
13    questions.   It's not dissimilar for citizenship  
14    versus other questions.   There was not a major  
15    statistical variation.   So, yes, a certain percent  
16    of people do not complete the 45, 48 or 70  
17    questions that are on the ACS or the long form,  
18    and they have various break-off rates under the  
19    Internet thing to tell where they stopped.

20                But, again, whether citizenship was a  
21    determinative factor in any of those cases, it's  
22    hard to determine.

1           Q     But the data suggests -- the data that  
2     the Census Bureau provided suggests that the  
3     break-off rate for noncitizens was higher with  
4     respect to a citizen question; is that correct?

5           A     Higher than noncitizen?

6           Q     Yes.

7           A     Yes. That's true.

8           Q     Okay. So if the same people who did not  
9     respond to the citizen question on the ACS also  
10    didn't respond to the short form of the decennial  
11    census, that would cause a drop in the total head  
12    count, correct?

13          A     No. It would not.

14          Q     Could you explain?

15          A     Secretary Ross placed the question at the  
16    end of the census so they would be able to not  
17    answer that and still complete the census. We  
18    also have administrative records and  
19    Secretary Ross directed we use administrative  
20    records, which we're actively doing for a variety  
21    of reasons, not just citizenship.

22                So we have every confidence between the

1 increased outreach that's planned, the additional  
2 money and resources that are to be put into the  
3 advertising and other things, that we will more  
4 than compensate -- in fact, our objection is to  
5 have a complete and accurate count above and  
6 beyond the count that was done in 2010.

7 Q But every individual is required to  
8 answer the census fully and completely, including  
9 all questions; is that not right?

10 A That's correct. Yes.

11 Though I would note, we've never  
12 prosecuted anybody for failure to do so.

13 MS. SENTENO: Okay. Go off the record.

14 VIDEOGRAPHER: We're going off the  
15 record. The time on the record is 5:46 p.m.

16 (Off the record.)

17 VIDEOGRAPHER: We're back on the record.  
18 The time on the video is 5:43 p.m.

19 EXAMINATION BY MS. BOUTIN:

20 Q Sir, I'd like to talk about the time  
21 period between the December 12th DOJ letter  
22 requesting the citizenship question and before

1 Secretary Ross issued the March 26 memo --  
2 decision memo.

3 A I'm sorry. Could you tell me who you're  
4 with?

5 Q Sure. My name is Gabrielle Boutin. I'm  
6 with the Attorney General's of the State of  
7 California, and I represent plaintiffs, the  
8 State of California -- excuse me -- State of  
9 California v. Ross in the Northern District of  
10 California.

11 A Okay. Thank you.

12 Q So during the time period between the  
13 December 12th DOJ letter and the issuance of  
14 Secretary Ross's March 26th memorandum, that's  
15 what we're talking about.

16 A I understand.

17 Q Do you understand?

18 A So far so good.

19 Q Good.

20 During that time period, did the  
21 Department of Commerce ever inform the  
22 Department of Justice that the Census Bureau

1 recommended using administrative records alone to  
2 meet Justice's December 12th request rather than  
3 adding the citizenship question to the census?

4 A I believe that was part of the purposes  
5 of the meeting they were seeking with the -- the  
6 Census Bureau was seeking with the  
7 Justice Department.

8 Q Okay. My question is: Did the  
9 Commerce Department ever inform DOJ that the  
10 Census Bureau recommended using administrative  
11 records alone to meet their requests, rather than  
12 adding a citizenship question to the census?

13 A Again, I'm not privy to all the  
14 conversations with the Justice Department, so --

15 Q Do you --

16 A -- I was not --

17 Q -- know --

18 A I was not involved in such a discussion,  
19 no.

20 Q Okay. But you were one of the primary  
21 people working on this at Commerce; isn't that  
22 right?

1 A Yes.

2 Q Do you think you would have known if  
3 someone from Commerce conveyed that information to  
4 the Department of Justice?

5 MR. GARDNER: Objection. Calls for  
6 speculation.

7 BY MS. BOUTIN:

8 Q Do you think it's likely you would have  
9 known?

10 A It's possible, yes.

11 Q Did the Department of Commerce ever  
12 transmit to the Department of Justice any of the  
13 Census Bureau memos analyzing options for  
14 providing block-level -- excuse me -- block-level  
15 citizenship data to the Department of Justice?

16 MR. GARDNER: Objection. Lack of  
17 foundation.

18 BY MS. BOUTIN:

19 Q That was repetitive. Let me rephrase.

20 A All right.

21 Q Did Commerce ever transmit to  
22 Department of Justice any of the Census Bureau's

1        memos that analyzed the options for providing to  
2        DOJ block-level citizenship data?

3                MR. GARDNER:    Objection.    Lack of  
4        foundation.

5                THE WITNESS:    I would just note it's the  
6        Secretary of Commerce's decision as to whether  
7        this goes forward.    His focus is on a complete and  
8        accurate count.

9                And as explained earlier, the Option C  
10        alternative, which was to use the administrative  
11        records only, would have inquired us to impute --  
12        so, in other words, fill in the blanks -- for 25  
13        million voting age citizens.    That was not  
14        something Secretary Ross was prepared to have the  
15        department do.

16        BY MS. BOUTIN:

17                Q        Mr. Comstock, I understand that.    Your  
18        counsel is -- wants us to limit the amount or time  
19        that we're here today, and the best way to do that  
20        is if you would answer my questions directly.    So  
21        I'll ask you again.

22                Did the Department of Justice ever --

1 A Not to my knowledge.

2 Q Okay. Thank you.

3 And again, we're talking about between  
4 December 12th and the March 26th.

5 A Right.

6 Q Did the Department of Commerce ever  
7 inform DOJ that the Census Bureau believed that  
8 administrative records alone would be more  
9 complete -- would create more complete and  
10 accurate citizenship data than asking a  
11 citizenship question on the census and then  
12 combining the data from that question with  
13 administrative records?

14 MR. GARDNER: Objection. Form.  
15 Objection. Lack of foundation.

16 BY MS. BOUTIN:

17 Q Do you want me to re-ask that question?

18 A Sure.

19 Q Did the Department of Commerce ever  
20 inform Justice that the Census Bureau believes  
21 that admin -- using administrative records alone  
22 would provide more complete and accurate data than

1       instead of doing that asking the citizenship  
2       question on the census and then combining that  
3       with the use of administrative records?

4               MR. GARDNER:   Same objection.

5               THE WITNESS:   Again, I think you  
6       mischaracterize the Census Department's -- Census  
7       Bureau's analysis.   But, again, it's the  
8       Secretary of Commerce's decision as to what to  
9       make, and so he would only transmit to the  
10      Justice Department what he considered that would  
11      provide complete and accurate data.

12      BY MS. BOUTIN:

13              Q       But the Commerce Department did inform  
14      the Department of Justice about that belief by the  
15      Census Bureau?

16              MR. GARDNER:   Same objections.

17              THE WITNESS:   Again, not to my knowledge.

18      BY MS. BOUTIN:

19              Q       Okay.   But did the Commerce Department  
20      ever inform Justice that the Census Bureau  
21      believed that 30 percent of responses by  
22      noncitizens as to citizen status are incorrect?

1 MR. GARDNER: Objection. Lacks  
2 foundation.

3 THE WITNESS: Again, I believe we have  
4 told the Justice Department that is now the case  
5 with the ACS data, yes.

6 BY MS. BOUTIN:

7 Q And was that conveyed between  
8 December 12th and March 26?

9 A I don't know.

10 Q Did Commerce ever communicate to Justice  
11 any of the substance of the Census Bureau's  
12 technical review of the -- of the  
13 Justice Department's request for a citizen  
14 question?

15 MR. GARDNER: Same objection.

16 THE WITNESS: Again, the Justice  
17 Department asked us to provide block-level --  
18 block-level census data. How we do that is a  
19 decision of Department of Commerce, not the  
20 Department of Justice.

21 BY MS. BOUTIN:

22 Q But is the answer to that question yes or

1 no?

2 A I forget the question.

3 Q Okay. I have to, so I'll say it again.

4 Did Commerce ever communicate to DOJ any  
5 of the substance of the Census Bureau's technical  
6 review to have DOJ's request for a citizenship  
7 question?

8 MR. GARDNER: Same objection.

9 THE WITNESS: Again, it's -- the  
10 technical review was how do we provide data that  
11 would respond to this, and that would not be  
12 relevant -- why would we communicate that to the  
13 Justice Department is not --

14 BY MS. BOUTIN:

15 Q Well, isn't -- didn't the  
16 Justice Department, isn't that ultimately the  
17 goal, according to that letter, getting  
18 block-level data for Voting Rights Act  
19 enforcement?

20 A Correct. But they --

21 Q Hold on. Hold on. And isn't -- don't  
22 you think they would want the most accurate data

1 of which to do that?

2 A And that's a determination of the  
3 Secretary, not the Justice Department, so --

4 Q But you don't think the  
5 Justice Department would want to know the  
6 Census Bureau's opinion on what would be best way  
7 to do that?

8 MR. GARDNER: Objection. Calls for  
9 speculation.

10 THE WITNESS: I don't think it would be  
11 relevant if I'm the Justice Department, at all.

12 BY MS. SENTENO:

13 Q Okay. I'd like to turn to the March 26th  
14 memo.

15 Was that Exhibit 30?

16 MR. GARDNER: No. I think --

17 THE WITNESS: I think it is. Yes.

18 BY MS. BOUTIN:

19 Q Okay. So I'd like to turn to Page 5,  
20 which is Bates number 1317.

21 A Okay.

22 Q And I'd like to avoid having to read a

1 full paragraph, but I also want you to understand  
2 the context, so let's start at the top of the  
3 first paragraph.

4 A Okay.

5 Q It says, "In my judgment that Option D  
6 will product DOJ with the most complete and  
7 accurate CVAP" -- excuse me. Let me start again.

8 "It is my judgment that Option D will  
9 provide DOJ with the most complete and accurate  
10 CVAP data in response to its request."

11 The paragraph then goes on to give a few  
12 reasons why Option D would be the best option in  
13 his opinion and then about in the middle of the  
14 paragraph, it gives one final reason starting with  
15 the word "finally," so I'm going to read that  
16 portion.

17 A Okay.

18 Q It says, "Finally placing the question on  
19 the decennial census and directing the  
20 Census Bureau to determine the best means to  
21 compare the decennial census responses with  
22 administrative records will permit the

1 Census Bureau to determine the inaccurate response  
2 rate for citizens and noncitizens alike using the  
3 entire population. This will enable the  
4 Census Bureau to establish, to the best of its  
5 ability, the accurate ratio of citizen to  
6 noncitizen responses to impute for that small  
7 percentage of cases where it is necessary to do  
8 so."

9 A Yes.

10 Q So with respect to those two sentences  
11 starting with the word finally, who wrote that  
12 language?

13 A I couldn't say for certain, but I likely  
14 had a hand in drafting that.

15 Q Okay. Can you explain, how does adding a  
16 citizenship question to the census and determining  
17 the incorrect response rate for citizens and  
18 noncitizens help the Census Bureau impute with  
19 respect to people who did not respond at all and  
20 did not have administrative records?

21 A I mean, you could ask the Census Bureau  
22 for a fuller explanation of imputation, but

1 basically, they do a formula that looks at data  
2 that they have. And so if they know for the  
3 people -- let's say 95 percent of the population  
4 that they have accurate records for and which they  
5 have responses for, if they discover that -- pick  
6 a number -- it's now 10 percent of the people who  
7 aren't citizens, are, in fact, noncitizens, then  
8 they would probably apply that to 5 percent  
9 remaining. So they would take whatever number of  
10 people who are citizens, multiply that by that 5  
11 percent, and then they would take the noncitizens  
12 and say, okay, we now know the accurate count,  
13 based on the entire population of what we have,  
14 there's a 10 percent error rate, 10 percent of the  
15 people that might say they're citizens are  
16 noncitizens, so we're going to multiply that  
17 number out. That's going to give you the most  
18 accurate count that you can get.

19 Q So what's your source of that  
20 explanation?

21 A Based on the briefings.

22 Q So you're saying that the Census Bureau

1 supports this statement here?

2 A This is the Secretary's statement.

3 Whether the --

4 Q But did the Census Bureau explain,  
5 say -- explanation you just offered me -- did  
6 they -- did they explain it that way to you?

7 A More or less, yeah.

8 Q And do you believe they support this  
9 statement in this memo?

10 A I'm going to make no representations  
11 about what the Census Bureau would or would not  
12 support.

13 Q Would it surprise you if you learned that  
14 they did not support that statement, that they did  
15 not ever represent to you or the Secretary that  
16 establishing that ratio would help impute for  
17 nonresponders?

18 A I would not be surprised if that was the  
19 opinion of Dr. Abowd, no.

20 Q Do you believe that Dr. Abowd wrote this  
21 memos on his own?

22 A I believe he had the help of lots of

1 staff. I have no --

2 Q Do you believe he acted against the  
3 opinions of his staff when he wrote the memos?

4 A I have no idea.

5 Q So -- but you believe that it was his  
6 opinion alone that contributed to -- that was  
7 reflected in those memos?

8 A No. Dr. Abowd is the head of the  
9 division that does that, so at the end of the day,  
10 he gets the final call, so --

11 And, again, just to be clear, do I think  
12 that there may be other opinions in the  
13 Census Bureau? Absolutely.

14 Q So do you have any source, other than the  
15 Census Bureau, for believing in the scientific  
16 empirical accuracy of these last two sentences of  
17 this paragraph?

18 MR. GARDNER: Objection. Form.

19 THE WITNESS: Yes. My experience, my  
20 knowledge and other people who also, including the  
21 Secretary, who is a very smart man, who also came  
22 to a similar conclusion.

1 BY MS. BOUTIN:

2 Q Do you believe you have more expertise in  
3 the science of imputation than the experts at the  
4 Census Bureau?

5 A I'm not going to get caught in making  
6 such a statement, but I'm perfectly capable of  
7 looking at the analysis they provided and deciding  
8 whether or not I agreed with that analysis.

9 Q What's your background in statistical  
10 imputation?

11 A I --

12 (Conference call interruption.)

13 BY MS. BOUTIN:

14 Q What is your background in statistical  
15 imputation?

16 A I don't have one.

17 Q Okay. Switching gears. Did you ever ask  
18 anyone at the Census Bureau whether placing the  
19 citizenship question on the census could affect  
20 the apportionment of the Congressional  
21 representatives to the state?

22 A I never asked that question.

1           Q     Are you aware of whether anyone else at  
2     Commerce ever asked that question to the  
3     Census Bureau?

4           A     Not to my knowledge.

5           Q     Okay.

6           MS. BOUTIN: I believe that's all I have.

7           MS. GOLDSTEIN: Let's go off the record.

8           MS. BOUTIN: Yeah. Let's go off the  
9     record.

10          VIDEOGRAPHER: We're going off the  
11     record. The time on the video is 5:56 p.m.

12          (Off the record.)

13          VIDEOGRAPHER: We're back on the record.  
14     The time on the video is 6:02 p.m.

15          MS. BOUTIN: We have completed our  
16     questions for today. However, based on the fact  
17     that there are still outstanding discovery  
18     responses and discovery documents, we are keeping  
19     the deposition open at this time.

20          MR. GARDNER: We oppose that, of course.  
21     You had the option to put this off, if you wanted  
22     to, knowing there were outstanding issues and

1 chose to go forward anyway, but we don't have to  
2 resolve this here and now.

3 The witness will read and sign.

4 VIDEOGRAPHER: This concludes today's  
5 video deposition. The time on the video is  
6 6:02 p.m. We are off the record.

7 (Whereupon, at 6:04 p.m., the deposition  
8 of EARL COMSTOCK was concluded.)  
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\* \* \* \* \*

CERTIFICATE OF REPORTER

I, KAREN LYNN JORGENSEN, RPR, CSR, CCR the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that the said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



-----  
KAREN LYNN JORGENSEN, RPR, CCR, CSR

Dated this 3rd day  
of September , 2018.

ACKNOWLEDGEMENT OF DEPONENT

I, EARL COMSTOCK, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

\_\_\_\_\_  
Date

\_\_\_\_\_  
EARL COMSTOCK

Joshua E. Gardner, Esquire

U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

Washington, D.C. 20530

IN RE: New York Immigration Coalition, et al., v.  
United States Department of Commerce, et al.

1 Dear Mr. Gardner:

2 Enclosed please find your copy of the  
3 deposition of EARL COMSTOCK, along with the  
4 original signature page. As agreed, you will be  
5 responsible for contacting the witness regarding  
6 signature.

7 Within 21 days of receipt of transcript,  
8 please forward errata sheet and original signed  
9 signature page to counsel for, John Freedman and  
10 all counsel of record.

11 If you have any questions, please do not  
12 hesitate to call. Thank you.

13 Yours,



14 Karen Lynn Jorgenson, RPR, CCR, CSR  
Capital Reporting Company  
15 1821 Jefferson Place, Northwest  
3rd Floor  
16 Washington, D.C. 20006  
(202) 857-3376

17  
cc: All counsel of record  
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E R R A T A S H E E T

Case Name: New York Immigration Coalition, et  
al., v. United States Department of Commerce, et  
al.,

Witness Name: EARL COMSTOCK

Deposition Date: Thursday, August 30, 2018

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Signature

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Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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The results are embargoed, but you could make qualitative conclusions about them. They are for January-November 2017. They are unweighted.

The place of birth and citizenship questions come after the basic person demographics and housing unit questions, so the people who get to this place in the form are already pretty cooperative. Dave Raglin suggests considering the place of birth and citizenship questions jointly, and he thinks ██████████ breakoff rate for the two questions together for Hispanics is notable.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF:	*	
	*	
	*	
NEW YORK IMMIGRATION	*	
COALITION, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	Civil Action No.
UNITED STATES DEPARTMENT	*	1:18-cv-05025
COMMERCE, and WILBUR L.	*	
ROSS, JR., in his capacity	*	
As Secretary of Commerce,	*	
et al.,	*	
	*	
Defendants.	*	

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Deposition of DIONE SUNSHINE HILLYGUS, was taken on  
Tuesday, October 9, 2018, commencing at 9:24 a.m., at 1100  
L Street, NW, Washington, DC, before Timothy J. Atkinson,  
Jr., a Notary Public.

A P P E A R A N C E S

On behalf of Department of Justice:

STEPHEN EHRLICH  
CAROTTA P. WELLS  
Trial Attorney  
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## I N D E X

Deponent	Examination By	Page
Dione S. Hillygus	Mr. Ehrlich - Direct	5

## E X H I B I T S

Exhibit No.	Description	Marked
DOJ:		
1	DSSD 2010 Census Coverage Measurement Memorandum Series 2010-G-1	12
2	2016 Internet Break-Off Rates, Bates 9692	27
3	January 19, 2018, memorandum for Wilbur Ross, Bates 1277	30
4	Understanding the Quality of Alternative Citizenship Data Sources for 2020 Census, by David Brown, et al	
5	Expert Report and Declaration of Ms. Hillygus	73
6	Press Release	136
7	January 1999, GAO High Risk Series an Update	137
8	Expert Rebuttal Report of Ms. Hillygus	157
9	Discussion Comments, 2020 update by Ms. Hillygus	170
10	Curriculum Vitae of Ms. Hillygus	178

1 P R O C E E D I N G S

2 (9:24 a.m.)

3 (Whereupon,

4 DIONE SUNSHINE HILLYGUS

5 the Deponent, called for examination by Counsel for  
6 Department of Justice, being first duly sworn to tell the  
7 truth, the whole truth, and nothing but the truth,  
8 testified as follows:)

9 DIRECT EXAMINATION

10 BY MR. EHRLICH:

11 Q. Dr. Hillygus, thank you for coming in.

12 A. Yeah.

13 Q. Can you state your full name for the record?

14 A. Dione Sunshine Hillygus.

15 Q. And you understand that you're under oath to tell  
16 the truth today?

17 A. I do.

18 Q. Are you represented by counsel?

19 A. Um-hmm.

20 Q. Have you ever had your deposition taken before?

21 A. Once.

22 Q. When was that?

23 A. It was in a voting rights act case in North  
24 Carolina.

25 Q. Okay. So you're familiar with the process a

1 little bit. Just want to go through a few things, will  
2 refresh your recollection so that --

3 A. Right.

4 Q. -- will make this a smooth process. So I'm going  
5 to be asking some questions today of course. Your counsel  
6 is here. From time-to-time he may object. I'm going to  
7 ask you to go ahead and answer the question anyway unless  
8 he directs you not to. All answers should be verbal. So,  
9 for example, no nodding. Does that make sense?

10 A. Yes.

11 Q. So they need that for the transcript. Let's try  
12 not to interrupt each other. So I'll try to wait until  
13 you're done talking before I talk and vice-versa. Does  
14 that make sense?

15 A. Yes.

16 Q. I'm going to try and phrase my questions clearly.  
17 I'm not trying to trick or confuse you. So if something is  
18 not clear, just ask me to clarify or explain, and I'll try  
19 to do that as well. Okay?

20 A. Okay.

21 Q. Is there any medical reason you can't testify  
22 truthfully today?

23 A. As long as my voice holds out.

24 Q. Any other reason you can't testify truthfully  
25 today?

1           A.    No.

2           Q.    Okay.  If you need to take a short break, I  
3 understand you're a little bit under the weather.  Just let  
4 me know.  The only thing I'll say is if I had asked a  
5 question, if you could answer that question before we go to  
6 a break.  We'll try to do that, and then we can take a  
7 break after that.  Does that make sense?

8           A.    Sounds good.

9           Q.    Okay.  At a high level, can you just explain the  
10 opinions and conclusions you're offering in this case?

11          A.    Sure.  And I'm happy to read from the report if  
12 helpful and entirely summarizing.  But I think that based  
13 on the available evidence that external to the Census  
14 Bureau as well as internal Census Bureau that there's going  
15 to be a differential self-response rate.  It is also the  
16 case that I see no evidence to suggest, and plenty of  
17 evidence to indicate that it will not be corrected by NRFU  
18 operations, and the communications campaign.  And, finally,  
19 I would say that based on the available evidence and  
20 standard scientific -- methodology practices and Census  
21 Bureau practices, that the addition of the citizenship  
22 question was not adequately tested to evaluate the impact  
23 on data quality.

24          Q.    Got it.  So now, first of all when you're talking  
25 about a differential self-response rate, can you explain

1 what differential self-response rate is?

2 A. Sure. So the best quality data on the census  
3 comes from people self-responding. That is, is they fill  
4 out information about their household. This round that  
5 will happen online predominantly, although it will also be  
6 available for some people with a paper form. The  
7 differential self-response rate simply refers to the fact  
8 that some groups are going to be more likely to self-  
9 respond than others, and that the addition of a citizenship  
10 question on the census form will make it more likely that  
11 some subgroups will be unlikely to respond.

12 Q. Okay. And what are those subgroups?

13 A. So the level at which I've focused attention, the  
14 Census Bureau has focused attention, but I'm happy to talk  
15 about others, is non-citizen households. And that is --  
16 includes households that have mixed status. Hispanics as a  
17 population category.

18 Q. Okay. And so is it your opinion in this case  
19 that the differential self-response rate will result in a  
20 differential net undercount?

21 A. Correct.

22 Q. Okay. So I just want to make sure we're on the  
23 same page with a few things before we get into the -- sort  
24 of the meat of your analysis. Does that make sense?

25 A. Um-hmm.

1           Q.    So when we're talking about a differential net  
2 undercount, we're saying that with regard to race and  
3 ethnicity, correct?

4                   MR. FREEDMAN:  Object to form.

5                   BY MR. EHRLICH:

6           Q.    Would you agree that there's been a differential  
7 net undercount in pretty much every census since that  
8 started being measured?

9           A.    Correct.

10          Q.    Okay.  And so your analysis in this case is not  
11 focused on that, you know, persistent net undercount in the  
12 census, but on the additional net undercount differential?  
13 Strike that.  Sorry.  Your opinion in this case is based on  
14 a differential net undercount attributable to the  
15 citizenship question, correct?

16          A.    Yes.

17          Q.    And not just persistent one that's been in every  
18 census, correct?

19          A.    Yes.  Although I certainly make reference to  
20 history and the importance of history or understanding the  
21 current census.

22          Q.    Of course.  Of course.  Thank you.  Would you  
23 agree that net undercount is the net undercount is the best  
24 measure we have for accuracy of the census count?

25                   MR. FREEDMAN:  Object to form.

1           THE DEPONENT: So I think it's very important  
2 following the Census Bureau quality standards to think  
3 about the objectivity, the integrity and the utility of the  
4 data. In terms of objectivity, that includes accuracy, but  
5 also unbiasedness. And so that means that we need accuracy  
6 not only of the overall count but also accuracy of  
7 subgroups. So that the census is fair and complete.

8           BY MR. EHRLICH:

9           Q. So then would you say differential net undercount  
10 is the best standard we have for judging the accuracy of  
11 the census count?

12          MR. FREEDMAN: Object to form.

13          THE DEPONENT: I'm not sure what you mean by  
14 best. I mean, it is one of the, you know, key things that  
15 we look at in terms of evaluating the fairness and  
16 completeness of the census count.

17          BY MR. EHRLICH:

18          Q. And what are better forms of judging the accuracy  
19 of the census count?

20          A. I'm not sure.

21          Q. Okay. In terms of quantitative analysis, is  
22 there another way to measure after the census how  
23 accurately we counted the population?

24          MR. FREEDMAN: Object to form.

25          THE DEPONENT: If I'm interpreting your question

1 correctly, the way that the accuracy is evaluated is with a  
2 post-enumeration survey and demographic analysis.

3 Q. And those analyses are using net undercount, is  
4 that right?

5 MR. FREEDMAN: Object to form.

6 THE DEPONENT: So, I guess, I'm not sure exactly  
7 your question.

8 BY MR. EHRLICH:

9 Q. Sure. So we do the census in the year ending in  
10 zero, correct? After that we do an analysis as best we can  
11 of whether got certain counts correct. Is that right?

12 A. Um-hmm.

13 Q. And so when we do that analysis how do we judge  
14 whether we got the count correct or incorrect?

15 A. So the post-enumeration survey is one piece of  
16 that coverage analysis. A demographic analysis is another.  
17 I'm not sure if you're asking me which is better or  
18 there -- these are both separate from and independent of  
19 the census, and both have identified the differential  
20 undercount for Hispanics.

21 Q. Got it. And so both of those analyses, both the  
22 post-enumeration survey and the demographic analyses focus  
23 on that undercount, is that right?

24 MR. FREEDMAN: Object to form.

25 THE DEPONENT: Differential undercount and net

1 undercount are both --

2 Q. Got it. Okay, got it. Thank you.

3 MR. EHRLICH: So I'm going to mark this as  
4 Exhibit 1.

5 (DOJ Exhibit 1 marked for identification.)

6 BY MR. EHRLICH:

7 Q. I've handed you what's been marked as Exhibit 1.

8 MR. FREEDMAN: Counsel, this doesn't have Bates  
9 numbers already. Do you know if it's been produced in this  
10 litigation?

11 MR. EHRLICH: This is publicly available online.

12 MR. FREEDMAN: I'm aware of that. Has it been  
13 produced in litigation?

14 MR. EHRLICH: I believe so, but I'm not entirely  
15 sure.

16 MR. FREEDMAN: Okay. We'll be following up on  
17 that.

18 MR. EHRLICH: Okay.

19 BY MR. EHRLICH:

20 Q. So I've handed you what's been marked as  
21 Exhibit 1. It says DSSD 2010 Census Coverage Measurement  
22 Memorandum Series 2010-G-1. Is that right?

23 A. Yes.

24 Q. Do you recognize this document?

25 A. I believe I have reviewed it, yes.

1 Q. Okay. I just want to walk through this so we're  
2 on the same page. Because obviously this goes to a lot of  
3 things in your analysis, correct?

4 MR. FREEDMAN: Object to the form.

5 BY MR. EHRLICH:

6 Q. So can we turn to page 12, please? So looking at  
7 Table 3, I just want to get a handle on what we're  
8 measuring here. So that's -- the census count at the top,  
9 that equals the sum of the correct enumerations, the  
10 erroneous enumerations and the whole person census  
11 imputations, is that right?

12 MR. FREEDMAN: Object to form and foundation.

13 THE DEPONENT: So, I mean I, I didn't produce  
14 this. I think I've looked at it at some point. I'd hate  
15 to --

16 BY MR. EHRLICH:

17 Q. Well --

18 A. -- issue an interpretation of somebody else's  
19 work in terms of the components or misstate without careful  
20 review.

21 Q. Sure. Well, go ahead and take a quick review of  
22 it, if you like, just so we're on the same page.

23 A. I mean, I can, but I mean in terms of what is it  
24 that I should be --

25 Q. So I'm just, I'm wondering how each of these

1 things are calculated is where I was going to go with this.

2 MR. FREEDMAN: Same objection, form and  
3 foundation.

4 THE DEPONENT: I would be very hesitant to try  
5 and explain Dr. Mule's work. I'm certainly happy to talk  
6 at a very high level, but just don't know that I feel  
7 comfortable interpreting in great detail without review.

8 MR. FREEDMAN: And for the record, we learned  
9 last Friday it's pronounced Mule.

10 THE DEPONENT: Oh.

11 BY MR. EHRLICH:

12 Q. Okay. So is it fair to say that you don't know  
13 how these numbers are calculated here in Table 3?

14 A. Well, it's just without review I'm not exactly  
15 sure what it's referencing.

16 Q. So I think the -- if you want to turn to the  
17 first several pages of the document, I think it explains.  
18 You want to turn to page 6? It says correct enumerations  
19 for components, right?

20 (Pause.)

21 A. So I think I have a general sense of this.

22 Q. Okay.

23 A. It wasn't, you know, kind of central to my  
24 opinion.

25 Q. I understand.

1 A. Right. Yeah.

2 Q. Okay. Thank you. So in Table 3 when we're  
3 looking at the -- it says the census count.

4 A. Um-hmm.

5 Q. And if we add up the numbers for correct  
6 enumerations, erroneous enumerations and whole person  
7 census imputations, that equals the census count. Does  
8 that make sense?

9 MR. FREEDMAN: Object to form and foundation.

10 BY MR. EHRLICH:

11 Q. I'm sorry. I didn't catch your answer.

12 A. Okay.

13 Q. Okay. Do you agree with that?

14 MR. FREEDMAN: The same objection. Go ahead.

15 THE DEPONENT: Looks like, yeah.

16 BY MR. EHRLICH:

17 Q. Okay. And so the category correct enumerations  
18 that's going to be the census count minus the erroneous  
19 enumerations and minus the whole person imputations,  
20 correct?

21 MR. FREEDMAN: Same objection.

22 THE DEPONENT: Sounds correct.

23 BY MR. EHRLICH:

24 Q. Does that look right from you -- for you?

25 A. Uh-huh.

1           Q.    Okay.  And then the category omissions near the  
2   bottom there, it's calculated with the difference between  
3   the dual system estimate of the total population and the  
4   category correct enumerations.

5           A.    Right.

6                   MR. FREEDMAN:  Same objection.  Just let me  
7   object before you --

8                   THE DEPONENT:  Okay.

9                   BY MR. EHRLICH:

10          Q.    And so the net undercount then, if I get this  
11   right, is equal to the omissions minus the erroneous  
12   enumerations, minus the whole person census imputations,  
13   correct?

14          A.    We're on the same page.

15          Q.    Okay.

16          A.    So to make clear though this is the net  
17   undercount, which is for the nation as a whole.  The issue  
18   here is not about the net undercount.  You can have,  
19   because you have over counted whites and under counted  
20   other subgroups you can have across the population as a  
21   whole a undercount that looks quite good, but can  
22   nonetheless have a differential undercount of subgroups  
23   that has implications for the distribution of funding and  
24   representation.  And my focus has been on the implications  
25   of adding a citizenship question for the differential self-

1 response and undercount.

2 Q. Got it. Is it possible to calculate a  
3 differential net undercount without an overall net  
4 undercount?

5 MR. FREEDMAN: Object to form.

6 THE DEPONENT: Technically I don't know the  
7 answer to that. I mean, I know as part of the coverage  
8 analysis that we get the net undercount. That's a very  
9 important metric for the census full -- at the same time  
10 for the census to be unbiased and fair and complete, we  
11 also have to have accuracy at subgroups that are  
12 distributed geographically in concentrated ways.

13 BY MR. EHRLICH:

14 Q. Got it. Understood. So going back to the table  
15 for a moment in the calculations that we talked through, is  
16 it possible for omissions to increase without increasing  
17 the net undercount?

18 MR. FREEDMAN: Object to form and foundation.

19 THE DEPONENT: Sure. If you overcount a bunch of  
20 college students, you can miss more people, and overall  
21 your count is still going to have an okay net undercount.

22 BY MR. EHRLICH:

23 Q. So could we turn to page 16 for a moment?

24 Actually, I'm sorry. Can we go back to 12?

25 A. Okay. So we were just talking about omissions,

1 and we said that omissions it subtracts erroneous  
2 enumerations and whole person census imputations, right?

3 MR. FREEDMAN: Object to form and foundation.

4 THE DEPONENT: I think so, if I got that  
5 correctly.

6 BY MR. EHRLICH:

7 Q. Yeah. And so the whole person census imputations  
8 are not accounted for by omissions, right?

9 MR. FREEDMAN: Object to form and foundation.

10 THE DEPONENT: So as noted in the table,  
11 omissions are people who should have been enumerated but  
12 were not. And it says many of these people may have been  
13 accounted for in the whole person census imputations.

14 BY MR. EHRLICH:

15 Q. Got it. Okay. Page 16, please. Table 8, which  
16 is titled Estimates of Percent Net Undercount by Race and  
17 Hispanic Origin. Did I read that right?

18 A. Correct.

19 Q. So according to this table the net undercount for  
20 Hispanics in the 2010 census was 1.54 percent, correct?

21 A. Correct.

22 MR. FREEDMAN: Object to foundation.

23 THE DEPONENT: Correct.

24 BY MR. EHRLICH:

25 Q. Is it fair to say that Hispanics in 2010 were not

1 evenly distributed across the country?

2 A. Yes.

3 Q. And so this would be an example of the  
4 differential net undercount, correct?

5 A. Well, I'm not sure the -- both of those things  
6 are separately true. Yes, the 1.54 is how much Hispanics  
7 are undercounted. The differential undercount would be  
8 whites minus Hispanics. And so you add the whites and  
9 Hispanics together. It is also true that Hispanics are not  
10 geographically distributed equally across the population.

11 Q. Okay. I think I understand. But just to go back  
12 for a moment. The white population it says was  
13 undercounted by .54, is that right?

14 MR. FREEDMAN: Object to foundation.

15 THE DEPONENT: So this is reported as an  
16 undercount. And so it's a negative number, which means  
17 that whites were actually overcounted. And so when  
18 calculating the differential undercount then whites were  
19 overcounted; Hispanics were undercounted. And so the  
20 difference between them is the differential undercount that  
21 I referenced in my report.

22 BY MR. EHRLICH:

23 Q. Got it. So is the net undercount judged against  
24 whites or judged against what the Hispanic population  
25 should have been counted at?

1 MR. FREEDMAN: Object to form and foundation.

2 THE DEPONENT: I mean, when we talk about the net  
3 undercount for the population as a whole, that's everyone.  
4 But when we talk about the differential undercount, we're  
5 talking about the subgroups relative to the count of  
6 whites. In some censuses whites have also been  
7 undercounted. And so we would say the differential  
8 undercount, right, is still the difference between the  
9 undercount of whites compared to the undercount of this  
10 other group. In the last couple censuses, we've  
11 overcounted whites. And so you end up with a differential  
12 undercount that is actually wider than the subgroup  
13 undercount. And, again, in terms of distribution of  
14 funding and resources, what matters is that fairness,  
15 right, that differential.

16 BY MR. EHRLICH:

17 Q. Got it. And so you were saying that the  
18 Hispanics were not evenly spread across the country in  
19 2010, right?

20 A. This particular table does not speak to that, but  
21 it is the case that Hispanics are not evenly distributed  
22 across the country in 2010 or today, yeah.

23 Q. And how in 2020? We'd expect that to be the case  
24 again, right?

25 A. I would assume so. Yes.

1 Q. Okay. And just for clarity this analysis in this  
2 document we're looking at is for the 2010 census, right?

3 MR. FREEDMAN: Object to form and foundation.

4 THE DEPONENT: Correct.

5 BY MR. EHRLICH:

6 Q. And there was no citizenship question on the 2010  
7 census?

8 A. Correct.

9 Q. And so that's why this report does not calculate  
10 an undercount for non-citizens, right?

11 MR. FREEDMAN: Object to form and foundation.

12 THE DEPONENT: I can't speak to their logic.  
13 But, yes, they would not be able to because they didn't  
14 have citizenship on the census.

15 BY MR. EHRLICH:

16 Q. Got it. So this document in front of you doesn't  
17 calculate a net undercount for non-citizens?

18 A. Correct.

19 MR. FREEDMAN: Object to --

20 BY MR. EHRLICH:

21 Q. Okay. Could we go to page 21, please? This is  
22 titled Percent Net Undercount for Persons by State,  
23 correct?

24 A. Yes.

25 Q. And it's showing the net undercount for each

1 state, is that right?

2 MR. FREEDMAN: Object to foundation.

3 THE DEPONENT: I, you know, I looked at this at  
4 one point but, again, it was not central to my opinion.  
5 I'm happy to review it, if you want me to look into it.

6 MR. EHRLICH: Yeah, just briefly, just so you  
7 know what this chart is saying or figure, I should say.

8 (Pause.)

9 THE DEPONENT: Okay. I think I --

10 BY MR. EHRLICH:

11 Q. So the note below says for each state and the  
12 District of Columbia the estimated percent net undercount  
13 is not significantly different from zero. Did I read that  
14 right?

15 MR. FREEDMAN: Object to form.

16 THE DEPONENT: Correct.

17 BY MR. EHRLICH:

18 Q. And we just looked at the percent net undercount  
19 for Hispanics that said it was 1.54 percent, correct?

20 MR. FREEDMAN: Object to form.

21 MR. FREEDMAN: Object to form and foundation.

22 THE DEPONENT: Correct. But this is a different  
23 quantity. This is now looking at the overall net  
24 undercount by geography, not within subgroup.

25 BY MR. EHRLICH:

1 Q. Got it. But you said that Hispanics are not  
2 evenly distributed across the country in 2010, right?

3 A. Correct.

4 Q. And the note for this figure says that each of  
5 these net undercount per state were not significantly  
6 different than zero, correct?

7 MR. FREEDMAN: Object to form and foundation.

8 THE DEPONENT: It does. But that is not testing  
9 whether for those subgroups that those differential  
10 undercount might not vary by geography. They're separate  
11 questions.

12 BY MR. EHRLICH:

13 Q. I got it. I'm just trying to see -- let me ask  
14 it this way. Based on these percent net undercount and the  
15 note below Figure 1, it doesn't seem that congressional  
16 apportionment would have been effective, correct.

17 MR. FIDLER: Objection to foundation and form.

18 THE DEPONENT: So number one, this is 2010,  
19 without the citizenship.

20 BY MR. EHRLICH:

21 Q. Yes.

22 A. Number two, I was not retained to look at impacts  
23 on apportionment. So I can't say that I feel comfortable  
24 making that judgment. And, three, I would just say that  
25 this in terms of where I was retained to talk about the

1 impact of adding a citizenship question on the 2020 census  
2 and the likely impact on self-response and the differential  
3 undercount that this graphic doesn't actually speak to that  
4 because it's lot looking by subgroup.

5 Q. Got it. But it is looking by state, correct?

6 A. It is.

7 MR. FREEDMAN: Object.

8 BY MR. EHRLICH:

9 Q. And the Table 3 we just looked at was talking  
10 about population by subgroup?

11 MR. FREEDMAN: Object to foundation.

12 THE DEPONENT: Yes.

13 BY MR. EHRLICH:

14 Q. Okay. And just for clarity, this says that the  
15 net undercount for each state here is not significantly  
16 different from zero?

17 MR. FIDLER: Objection to form and foundation.

18 THE DEPONENT: For the overall population in that  
19 state in 2010, correct.

20 BY MR. EHRLICH:

21 Q. Got it. So you can put that to the side for now.  
22 Thank you. So we are talking about the differential self-  
23 response rate, correct?

24 A. Correct.

25 Q. And your analysis focuses on Hispanics and non-

1 citizens, is that right?

2 A. Correct.

3 Q. Can you explain the basis for your conclusion  
4 that a citizenship question will depress the response rate  
5 among Hispanic citizens?

6 A. Sure. So there's two different reasons to look  
7 at Hispanics and not just non-citizens. Sometimes it's the  
8 case that the data are not available separating non-  
9 citizens from Hispanics. We know that there's an overlap  
10 between the two. And so that seemed to be the rationale in  
11 some of the Census Bureau analyses. But I outlined and  
12 reviewed and showed that there is considerable evidence  
13 that in fact Hispanic citizens are also showing increased  
14 sensitivity, are likely to have increased sensitivity to  
15 the citizenship question as evidenced by public opinion,  
16 polling data, by other kind of civic and government  
17 interactions that have had spillover effects on Hispanics  
18 citizens. Leading me to the conclusion that it is likely  
19 to have an impact not only on non-citizens but also on  
20 Hispanic citizens.

21 Q. Got it. Did you attempt to quantify the  
22 potential impact of a citizenship question on the self-  
23 response rate of Hispanic citizens?

24 A. The Census Bureau has not produced the data that  
25 would make that possible.

1           Q.    Got it.  And so the studies you were talking  
2   about, were those qualitative studies?

3                   MR. FREEDMAN:  Object to form.

4                   THE DEPONENT:  No.  It was a variety of different  
5   research projects, quantitative and qualitative.  So for  
6   instance public opinion polling data that has looked at,  
7   you know, fears about deportation.  That's quantitative  
8   data now.  It's not directly linked to the citizenship  
9   question.  Likewise, there is considerable quantitative  
10  evidence regarding Hispanic citizens declining to take food  
11  stamps and healthcare benefits under the Trump  
12  administration when there's fears about deportation and  
13  fears about confidentiality.  These all point to the  
14  likelihood that Hispanic citizens will also be -- also  
15  consider citizenship question to be sensitive.

16                   BY MR. EHRLICH:

17           Q.    Got it.  Were those studies performed in the  
18  context of a decennial census?

19                   MR. FREEDMAN:  Object to form.  Do you want her  
20  to look at -- I mean, she talks about the 12 of them in the  
21  report or so.  Do you want her to walk through, and she can  
22  tell you what's quantitative, what's qualitative?

23                   MR. EHRLICH:  No.  Just talking generally right  
24  now.

25                   THE DEPONENT:  So -- I'm sorry.  Will you repeat

1 the question. Sorry.

2 BY MR. EHRLICH:

3 Q. Sure. I was wondering if those studies that you  
4 were referencing were in the context of the decennial  
5 census?

6 MR. FREEDMAN: Object to form.

7 THE DEPONENT: So in terms of some of the  
8 evidence that I relied on in reaching my conclusions some  
9 of that was specific to the Census Bureau. For instance,  
10 some of the spontaneous -- the qualitative research that  
11 showed spontaneous concerns about confidentiality of the  
12 census, mentioning DACA and other things. Some of it was  
13 external quantitative research that was not specific to the  
14 census.

15 MR. EHRLICH: Got it. Exhibit 2.  
16 (DOJ Exhibit 2 marked for identification.)

17 BY MR. EHRLICH:

18 Q. So I've handed you what's been marked as Exhibit  
19 2. The title says 2016 Internet Break-off Rates from  
20 Internet -- Data Weighted with Base Weight. And it's Bates  
21 stamped 9692. Can you describe what a break-off is?

22 A. Sure. It's when in the course of taking a survey  
23 that someone exits from the survey. So in the Internet  
24 case that could come about because somebody lost Internet  
25 connection or they could come about because somebody

1 decides they don't want to continue the survey.

2 Q. Got it. So this is a household group again  
3 answering, and then stopped answering at a particular  
4 point?

5 A. Correct.

6 Q. Okay. And this chart breaks it down by  
7 non-Hispanic white, non-Hispanic non-white and Hispanic,  
8 right?

9 MR. FREEDMAN: Object to form and foundation.

10 THE DEPONENT: Correct.

11 BY MR. EHRLICH:

12 Q. Does it differentiate between Hispanic citizens  
13 and Hispanic non-citizens?

14 MR. FREEDMAN: Object to form and foundation.

15 THE DEPONENT: It does not.

16 BY MR. EHRLICH:

17 Q. Okay. Given the current planning for the 2020  
18 census do you know where the citizenship question is going  
19 to be placed on that?

20 MR. FREEDMAN: Object to foundation.

21 THE DEPONENT: So according to Secretary Ross's  
22 memo, the citizenship question will be added at the end.  
23 But that's a little bit unclear because what the end is  
24 depends on the nature of the household. And so if you have  
25 multiple individuals in a household, the end in answering

1 about one member of the household is not in fact the end of  
2 the survey. I don't know how the Census Bureau has  
3 resolved Ross's direction to put it at the end of the  
4 survey given that it is an individual household member.  
5 That's not something I have an answer to.

6 Q. Got it. So if somebody was filling out the  
7 questionnaire for the household and they got to the  
8 citizenship question, decided not to answer, the remainder  
9 of that information would have been filled out, is that  
10 right?

11 MR. FREEDMAN: Object to form and foundation.

12 THE DEPONENT: So yes. So if a member of the  
13 household answers the household level of questions, and  
14 then they start answering the questions about them as the  
15 head of household, and they get to the citizenship  
16 question, and decide that because of that question they no  
17 longer want to participate, they will -- they would break  
18 off. Maybe they want to answer that question for  
19 themselves and not for, say a spouse, who might be a non-  
20 citizen. Then they might answer for themselves, continue  
21 on in answering about the other member of the household and  
22 break off the citizenship question at a different point.  
23 The point I would just make is that it's -- there's not a  
24 clear it's the end of survey at least as I understand it.

25 BY MR. EHRLICH:

1 Q. Got it. Before they got to that point on the  
2 census they would have filled out how many members in the  
3 household, right?

4 MR. FREEDMAN: Object to form.

5 THE DEPONENT: Correct.

6 MR. EHRLICH: Okay. We're done with two. So  
7 I've handed you what's been marked as Exhibit 3.

8 (DOJ Exhibit 3 marked for identification.)

9 BY MR. EHRLICH:

10 Q. It's a January 19, 2018, memorandum for Wilbur  
11 Ross, Secretary of Commerce, Bates stamped 1277. Can we go  
12 to page that's labeled 1280?

13 A. Okay.

14 Q. Are you familiar with this memo?

15 A. I am.

16 Q. And you've reviewed this memo before?

17 A. I have.

18 Q. So in the section that's labeled quality of  
19 citizenship responses, the second paragraph in that  
20 section, this is talking about item non-response rates for  
21 non-Hispanic whites, non-Hispanic blacks and Hispanics, is  
22 that right?

23 MR. FREEDMAN: Object to form and foundation.

24 (Pause.)

25 THE DEPONENT: Okay, sorry. Will you repeat your

1 question?

2 BY MR. EHRLICH:

3 Q. Sure. So this paragraph is discussing item non-  
4 response rates for non-Hispanic whites, non-Hispanic blacks  
5 and Hispanics, correct?

6 MR. FREEDMAN: Object to form and foundation.

7 THE DEPONENT: Correct.

8 BY MR. EHRLICH:

9 Q. And this on the 2013 and 2016 American Community  
10 Survey?

11 MR. FREEDMAN: Object to form and foundation.

12 THE DEPONENT: Correct.

13 BY MR. EHRLICH:

14 Q. If I say ACS, you know that means American  
15 Community Survey?

16 A. Yes.

17 Q. Okay. Can you explain what an item non-response  
18 is?

19 A. Yes. Item non-response refers to someone not  
20 providing an answer for an individual question.

21 Q. So if somebody skips that question, for example,  
22 that would be an item non-response?

23 A. Correct.

24 Q. And so as we were discussing for the 2020 census  
25 questionnaire, if somebody skipped the citizenship

1 question -- assuming they answered the other questions, we  
2 would have the remaining information for that household?

3 MR. FREEDMAN: Object to form.

4 THE DEPONENT: Correct. So the Census Bureau  
5 would impute, and would end up with lower quality data  
6 because of that imputation. But, yes, you would still  
7 enumeration of the entire household.

8 BY MR. EHRLICH:

9 Q. Got it. Did you rely on this memo when you were  
10 talking about decline in self-response rates for Hispanic  
11 citizens?

12 A. No, I don't recall that I did. I mean, in terms  
13 of a decline in self-response rate of Hispanic citizens --

14 MR. FREEDMAN: Do you need to see your report?

15 THE DEPONENT: Yeah. I could look at my report  
16 to look specifically. This to me was evidence that this is  
17 a sensitive question for Hispanics. The fact that you have  
18 higher levels of item non-response as with the break-offs.  
19 Again, indication that the citizenship question is a  
20 sensitive question for Hispanics. Of course, we don't have  
21 this broken by citizenship status.

22 BY MR. EHRLICH:

23 Q. Got it. So we looked at the break-off rates --  
24 strike that. So we've looked at the ACS break-off rates  
25 and ACS item non-response rate, correct?

1           A.     Correct.

2           Q.     And neither of these studies provided  
3     quantitative evidence regarding unit non-response rates of  
4     Hispanic citizens, is that right?

5                     MR. FREEDMAN:   Object to form.

6                     THE DEPONENT:   Correct.

7                     BY MR. EHRLICH:

8           Q.     Okay.   So focusing on the non-citizen piece of  
9     the differential self-response rate we were talking about,  
10    can you describe the basis for your conclusion that the  
11    citizenship question will depress response rates among  
12    non-citizens?

13          A.     Sure.   I'm happy to review my report.   It helps  
14    to be more precise.   But generally I think some of the most  
15    compelling evidence comes from the Census Bureau analysis  
16    regarding the -- it's the Brown white memo.

17          Q.     Got it.   And this Exhibit 3 memo also does sort  
18    of a preliminary analysis that ends up in that White paper,  
19    is that right?

20          A.     My understanding is, is that it summarizes some  
21    initial analyses that Brown et al, were working on related  
22    to that.

23          Q.     Got it.   So looking at Exhibit 3, staying on the  
24    same page, 1280, the section titled Self-Response Rate  
25    Analysis.   Can you describe what this analysis is doing?

1 MR. FREEDMAN: Object to form and foundation.

2 THE DEPONENT: So the -- this is summarizing what  
3 was later in the Brown, et al, White memo that matches the  
4 administrative records to be able to identify households as  
5 citizen or non-citizen to be able to speak about the impact  
6 of the addition of the citizenship question on  
7 self-response.

8 BY MR. EHRLICH:

9 Q. And this is comparing the 2010 census and the  
10 2010 ACS, right?

11 MR. FREEDMAN: Object to form and foundation.

12 THE DEPONENT: Correct.

13 BY MR. EHRLICH:

14 Q. Separately for citizen and non-citizen  
15 households?

16 A. Yes.

17 Q. And the bottom of this paragraph, the last  
18 sentence, it says once again --

19 MR. FREEDMAN: Which paragraph are you --

20 MR. EHRLICH: I'm sorry. The second paragraph  
21 under the heading of Self-Response Rate Analysis.

22 MR. FREEDMAN: So the very bottom of the page?

23 MR. EHRLICH: correct. It says once again the  
24 self-response rates were lower in the ACS than in 2010  
25 census for both citizen and non-citizen households in this

1 2010 comparison. Moreover, the decline in self-response  
2 was 5.1 percentage points greater for non-citizen  
3 households than for citizen households.

4 BY MR. EHRLICH:

5 Q. Did I read that correctly?

6 A. Yes.

7 Q. Okay. And so this is concluding that the  
8 difference in self-response rate between all citizen  
9 households and households with at least one non-citizen as  
10 noted by administrative records is 5.1 percentage-wise,  
11 right?

12 MR. FREEDMAN: Object to form and foundation.

13 THE DEPONENT: Among the sample that was able to  
14 be matched of these datasets, yes. And the analysis later  
15 revised that particular estimate, and based on various  
16 modeling functions had a wider range of -- sizes.

17 BY MR. EHRLICH:

18 Q. Got it.

19 A. Yes.

20 Q. I'm handing you what's been marked as Exhibit 4.  
21 (DOJ Exhibit 4 marked for identification.)

22 BY MR. EHRLICH:

23 Q. Titled Understanding the Quality of Alternative  
24 Citizenship Data Sources for the 2020 Census, by David  
25 Brown, et al. Bates stamped COM underscore DIS 00009833.

1 Can we turn to page 11. Table 1 says 2016 ACS Internet  
2 Self-Response Break-off Rates Percent by Screen, is that  
3 right?

4 A. Yes.

5 Q. So this is showing the break-off rates for the  
6 2016 ACS broken down by non-Hispanic whites, non-Hispanic  
7 other and Hispanics, correct?

8 MR. FREEDMAN: Object to foundation.

9 THE DEPONENT: Yes.

10 BY MR. EHRLICH:

11 Q. Okay. Can you look at the break-off rate for  
12 work location for Hispanics? What is that rate?

13 MR. FREEDMAN: Object to form and foundation.

14 THE DEPONENT: 1.246.

15 BY MR. EHRLICH:

16 Q. And that's about double the break-off rate for  
17 non-Hispanic whites, correct?

18 A. Correct.

19 Q. And the break-off rate for wage amount for  
20 Hispanic, what is that?

21 MR. FREEDMAN: Object to form and foundation.

22 THE DEPONENT: .751.

23 BY MR. EHRLICH:

24 Q. And that's higher than the break-off rate for  
25 non-Hispanic whites, correct?

1 MR. FREEDMAN: Object to form and foundation.

2 THE DEPONENT: Yes. That looks, yeah.

3 BY MR. EHRLICH:

4 Q. And what is the break-off rate for work for wages  
5 for Hispanics?

6 MR. FREEDMAN: Object to form and foundation.

7 THE DEPONENT: .590.

8 BY MR. EHRLICH:

9 Q. And that's again higher than non-Hispanic white,  
10 correct?

11 MR. FREEDMAN: Same objection.

12 THE DEPONENT: Correct.

13 BY MR. EHRLICH:

14 Q. And the break-off rate for type of employee for  
15 Hispanics?

16 MR. FREEDMAN: Same objection.

17 THE DEPONENT: .399.

18 BY MR. EHRLICH:

19 Q. And again that's higher than the break-off rate  
20 for non-Hispanic whites, correct?

21 MR. FREEDMAN: Same objection.

22 THE DEPONENT: Yes.

23 BY MR. EHRLICH:

24 Q. And the break-off rate for health insurance for  
25 Hispanics on the 2016 census or 2016 ACS, excuse me, what

1 is that?

2 MR. FREEDMAN: Same objection.

3 THE DEPONENT: .336.

4 BY MR. EHRLICH:

5 Q. And that's again higher than non-Hispanic white  
6 break-off rate on the 2016 ACS?

7 MR. FREEDMAN: Same objection.

8 THE DEPONENT: Yes.

9 BY MR. EHRLICH:

10 Q. And the break-off rate for work duties for  
11 Hispanics?

12 MR. FREEDMAN: Do you have a question?

13 BY MR. EHRLICH:

14 Q. What is that?

15 MR. FREEDMAN: Same objection.

16 THE DEPONENT: .266.

17 BY MR. EHRLICH:

18 Q. And again that's higher than the break-off rate  
19 for non-Hispanic whites on the 2016 ACS?

20 A. Correct.

21 Q. Okay. And for the taxes question on the 2016  
22 ACS, what was the break-off rate for Hispanics?

23 MR. FREEDMAN: Same objection.

24 THE DEPONENT: .259.

25 BY MR. EHRLICH:

1           Q.    And that's again higher than non-Hispanic whites,  
2   correct?

3                   MR. FREEDMAN:   Same objection.

4                   THE DEPONENT:   Correct.

5                   BY MR. EHRLICH:

6           Q.    And residence last year, what is the break-off  
7   rate for Hispanics on the 2016 ACS?

8                   MR. FREEDMAN:   Same objection.

9                   THE DEPONENT:   .232.

10                  BY MR. EHRLICH:

11           Q.    And that's higher than the break-off rate for  
12   non-Hispanic white on the 2016 ACS, is that right?

13                  MR. FREEDMAN:   Same objection.

14                  THE DEPONENT:   Correct.

15                  BY MR. EHRLICH:

16           Q.    So is it fair to say that each of these questions  
17   we looked at on the 2016 ACS have break-off rates that  
18   differentially impact Hispanics when compared to non-  
19   Hispanic whites?

20                  MR. FREEDMAN:   Same objection.

21                  THE DEPONENT:   They are larger for Hispanics than  
22   non-Hispanic whites, but none of them come close to the  
23   differential that we see on the citizenship question.

24                  BY MR. EHRLICH:

25           Q.    And the citizenship question on the 2016 ACS has

1 a break-off rate for Hispanics of .363, is that right?

2 MR. FREEDMAN: Same objection.

3 THE DEPONENT: Correct.

4 BY MR. EHRLICH:

5 Q. And for non-Hispanic whites the break-off rate on  
6 the 2016 ACS for the citizenship question is .035, is that  
7 right?

8 A. Correct.

9 Q. Can we go to page 36? Looking at Table 7. Feel  
10 free to review the -- text.

11 (Pause.)

12 BY MR. EHRLICH:

13 Q. Have you reviewed this before?

14 A. I have seen it before, although it was given to  
15 me very late in the process in terms of my writing expert  
16 report. So I wasn't able to give it as much, nearly as  
17 much attention as I would have preferred.

18 Q. Yes. Time is short in these cases. Looking at  
19 the top panel in Table 7.

20 A. Um-hmm.

21 Q. This mirrors the analysis we looked at for  
22 Exhibit 3, right, Dr. Abowd's January 19th memo?

23 MR. FREEDMAN: Object to form and foundation.

24 THE DEPONENT: I mean, he was referencing a  
25 different table in here, my understanding.

1 BY MR. EHRLICH:

2 Q. So the top panel here, this looks at households  
3 with at least one -- one AR non-citizen, right?

4 A. Correct.

5 Q. And compares it with households with AR all  
6 citizen households?

7 A. Correct.

8 Q. Was that the same analysis that was done in  
9 Exhibit 3?

10 A. Well, so he was referencing Table 6.

11 Q. Yes.

12 A. Where you get the 5.1 difference in the --

13 Q. Yes.

14 A. Whereas this is the 11.9 difference in  
15 difference, which was just one of the points I made was  
16 that depending on the modeling assumptions that you make,  
17 you can get -- you get a different effect.

18 Q. Right. So but the -- you're talking about the  
19 bottom panel for the 11.9, right?

20 A. Yes.

21 Q. Okay.

22 A. But I believe Dr. Abowd when he was referencing  
23 the 5.1 that that was the difference in difference result  
24 from Table 6.

25 Q. Right. And those same two groups, AR all citizen

1 households and households with at least one AR non-citizen  
2 are analyzed at the top panel of Table 7, right?

3 A. Yes.

4 MR. FREEDMAN: Object to form and foundation.

5 THE DEPONENT: Yes.

6 BY MR. EHRLICH:

7 Q. And the bottom panel is analyzing two different  
8 groups, right?

9 MR. FREEDMAN: Object to foundation.

10 THE DEPONENT: Yes.

11 BY MR. EHRLICH:

12 Q. And what are those two groups?

13 MR. FREEDMAN: Object to form and foundation.

14 THE DEPONENT: So it looks like AR refers to  
15 administrative record, and ACS, and then it's all citizen  
16 households.

17 BY MR. EHRLICH:

18 Q. And that's compared with another group?

19 A. Well, it's comparing self-response rates for the  
20 2010 ACS compared to the 2010 census, and what you see is  
21 for all citizen households that you have a higher self-  
22 response rate in the 2010 census compared to the 2010 ACS,  
23 and that difference is 8.9 percentage points.

24 Q. Got it. And above that it says all other  
25 households, right?

1 A. Correct.

2 Q. And what group is that?

3 MR. FREEDMAN: Object to form and foundation.

4 THE DEPONENT: I assume that refers to any  
5 households that are not all citizen households.

6 BY MR. EHRLICH:

7 Q. And then the drop in response rate from the --  
8 between the 2010 census and the 2010 ACS is 20.7, right?

9 A. Correct.

10 Q. And so the difference in difference analysis here  
11 in Table 7 the bottom panel appears to be that AR and ACS  
12 all citizen households have a self-response rate that's  
13 11.9 percentage points higher than all other households,  
14 right?

15 MR. FREEDMAN: Object to form and foundation.

16 THE DEPONENT: Correct.

17 MR. FREEDMAN: We've been going a little over an  
18 hour. Can we take a break?

19 MR. EHRLICH: Yes. Let me just ask one more  
20 question, then we can take a break.

21 BY MR. EHRLICH:

22 Q. So the paragraph below the table, the second  
23 sentence says, other characteristics besides citizenship  
24 status could be associated with the lower ACS self-response  
25 and AR non-citizen household and all other household groups

1     could have a higher propensity to have such  
2     characteristics. Is that right?

3             MR. FREEDMAN: I'm sorry. You're talking about  
4     the text paragraph, not the long footnote or the --

5             MR. EHRLICH: Correct.

6             MR. FREEDMAN: Okay.

7             THE DEPONENT: And correct, yes, that was my --

8             MR. EHRLICH: Okay, we can take a break.

9             MR. FREEDMAN: Thank you.

10            (Off the record at 10:30 a.m.)

11            (On the record at 10:47 a.m.)

12            BY MR. EHRLICH:

13            Q. Dr. Hillygus, we were looking at page 36 here of  
14     the Brown white paper.

15            A. Um-hmm.

16            Q. You said you've reviewed this before, correct?

17            A. Correct.

18            Q. Okay. And the text paragraph below Table 7, the  
19     second sentence was the sentence I just read. Can you read  
20     the last sentence of that paragraph?

21            A. To explore this possibility, we performed  
22     Blinder-Oaxaca decompositions.

23            Q. Do you know what Blinder-Oaxaca decompositions  
24     are?

25            A. Vaguely. They're not something that I have done

1 before. They're kind of discipline specific. Much more  
2 common in economics than other social science disciplines.

3 Q. Got it. So you don't perform Blinder-Oaxaca  
4 decompositions in your work?

5 A. No. But even when I'm doing causal inference  
6 type of modeling, I mean, it's, you know, it's just a  
7 particular modeling assumption.

8 Q. Okay. And do you know what the modeling  
9 assumption is for a Blinder-Oaxaca decomposition?

10 A. So I don't want to misspeak on exactly, but  
11 essentially what is going on here is they're attempting to  
12 account for a set of -- for variants that you can see in  
13 Table A-14, I believe is the one, as an attempt to account  
14 for these other characteristics that might also be  
15 associated with self-response rates. But, you know, one of  
16 the things that was a little bit frustrating about this to  
17 the write-up is that the justification for that model  
18 specification was not given. And I would argue that some  
19 of the items were not exactly ones that -- I mean, I think  
20 an argument can be made as to ones that you might not want  
21 to include.

22 Q. Okay. So let's go to Table A-14 then since  
23 you're talking about it. So these are the factors they're  
24 attempting to rule out for the purposes of the Blinder-  
25 Oaxaca decomposition analysis?

1           A.    Well, think about it just in terms of what  
2   they're trying to do is remove from the prediction of the  
3   effect of these particular variables.  Yeah.

4           Q.    Got it.

5           A.    It is standard practice for statistical analyses  
6   to explain why you include particular variables in your  
7   model, and that's not done here.  So I can certainly  
8   speculation about their decision making but, of course this  
9   is just reviewing their analyses.

10          Q.    So the first factor listed here is log household  
11   size, is that right?

12          A.    Correct.

13          Q.    And so this means that the Blinder-Oaxaca  
14   decompositions are taking into account log household size  
15   in attempting to explain the difference in self-response  
16   rates between the 2010 ACS and the 2010 census for these  
17   groups at the tops of the columns, right?

18               MR. FREEDMAN:  Object to form and foundation.

19               THE DEPONENT:  That's my understanding of their  
20   analysis.

21               BY MR. EHRLICH:

22          Q.    Okay.  And the second two groups of columns what  
23   are those?

24               MR. FREEDMAN:  Same objection.

25               THE DEPONENT:  So it is the administrative record

1 and ACS all citizen versus all other households.

2 BY MR. EHRLICH:

3 Q. Got it.

4 A. And to be clear, I mean, this is basically just  
5 talking about different comparisons. That's one of the  
6 points I made in my report was that you can make an  
7 argument that given the differential undercount is relative  
8 to whites that looking at just all citizen households as  
9 kind of the baseline or all other house lines as a base  
10 line is maybe not even the right benchmark comparison.

11 Q. Okay. We'll get there in a little bit. So  
12 looking at the left side, these are the factors that  
13 they're attempting to account for with their Blinder-Oaxaca  
14 decompositions? Is that right?

15 A. That's my interpretation of their analysis, yes.

16 Q. Okay. Do you see work location as one of the  
17 factors?

18 MR. FREEDMAN: Object to form and foundation.

19 THE DEPONENT: No. I see last week search for a  
20 job.

21 BY MR. EHRLICH:

22 Q. Do you see wage amount?

23 MR. FREEDMAN: Same objection.

24 THE DEPONENT: I don't.

25 BY MR. EHRLICH:

1 Q. Do you see work for wages?

2 MR. FREEDMAN: Same objection.

3 THE DEPONENT: I don't. I don't know how the  
4 household income is computed relative to some of those  
5 variables that you're mentioning. So I'm not exactly sure  
6 of the --

7 BY MR. EHRLICH:

8 Q. Fair enough. Do you see type of employee on the  
9 left side of Table A-14?

10 MR. FREEDMAN: Object to form.

11 THE DEPONENT: No.

12 BY MR. EHRLICH:

13 Q. Do you see health insurance as one of these  
14 factors in Table A-14?

15 MR. FREEDMAN: Same objection.

16 THE DEPONENT: I do not.

17 BY MR. EHRLICH:

18 Q. Do you see work duties?

19 MR. FREEDMAN: Same objection.

20 THE DEPONENT: I do not.

21 BY MR. EHRLICH:

22 Q. Do you see taxes?

23 MR. FREEDMAN: Same objection.

24 THE DEPONENT: I do not.

25 BY MR. EHRLICH:

1 Q. Do you see residence last year?

2 MR. FREEDMAN: Same objection.

3 THE DEPONENT: I do not.

4 BY MR. EHRLICH:

5 Q. So we can go back to page 37. The paragraph in  
6 the middle of the page that starts the first term, can you  
7 read the last sentence of that paragraph?

8 MR. FREEDMAN: I'm sorry. Where?

9 MR. EHRLICH: The middle paragraph on page 37  
10 that starts with the first term.

11 THE DEPONENT: The --

12 MR. FREEDMAN: Objection. Asked and answered.

13 Go ahead.

14 THE DEPONENT: The White paper says the  
15 interpretation of the unexplained variation represents the  
16 citizenship question effect is dependent on the assumption  
17 that there are no unobserved variables relevant to the  
18 difference in differences in self-response across the two  
19 surveys.

20 BY MR. EHRLICH:

21 Q. What does that mean?

22 MR. FREEDMAN: Object to form and foundation.

23 THE DEPONENT: It means that an RCTU would have  
24 been better at the end of the day. That when you're trying  
25 to do observational work and draw a causal inference that

1 you have to deal with both observed and unobserved  
2 confounders. And they presumably are very limited in the  
3 things that are observed that they can account for. So,  
4 for instance, as I explained in my report the reason that  
5 we expect to see this impact of the citizenship question is  
6 because citizenship is a sensitive question on which some  
7 groups in the population are concerned about  
8 confidentiality. If we had that directly measured, right,  
9 that would allow us to explicitly kind of test for that.  
10 We don't have that directly measured. And so, you know,  
11 they are attempting to account for some of -- the variety  
12 of factors that account for differences in self-response  
13 rates. They have to do it imperfectly. All social  
14 scientists who try to do causal inference work recognize  
15 this. They also say that their conclusions are  
16 conservative for a variety of reasons. I think that the  
17 model specification is potentially however one of them. In  
18 part because they account for some -- treatment variables,  
19 I think. They don't explain or justify why they have the  
20 particular model specification that they do, which is  
21 standard practice.

22 BY MR. EHRLICH:

23 Q. Got it. So turning to page 38. Table 8 is  
24 showing the analysis of some factors we just looked at in  
25 Table A-14 of this White paper, right?

1 MR. FREEDMAN: Object to form and foundation.

2 THE DEPONENT: Yes. That's my understanding of  
3 their analysis.

4 BY MR. EHRLICH:

5 Q. And so looking at the bottom panel, what is the  
6 difference in differences for AR and ACS all citizen  
7 households versus all other citizen households?

8 MR. FREEDMAN: Same objection.

9 THE DEPONENT: Which one?

10 BY MR. EHRLICH:

11 Q. The difference in differences.

12 A. So the 11.9?

13 Q. Yeah. And that's the same 11.9 from Table 7,  
14 right?

15 A. Yes.

16 Q. And so Table 8 is trying to apply the  
17 Blinder-Oaxaca decompositions to that in order to explain  
18 certain factors that they tried to account for, right?

19 A. Yes.

20 MR. FREEDMAN: Objection.

21 BY MR. EHRLICH:

22 Q. And that -- the part that's explained by the  
23 factors that they attempted to control for is the row that  
24 says explained on the bottom of Table 8?

25 MR. FREEDMAN: Same objection.

1 BY MR. EHRLICH:

2 Q. Is that right?

3 A. Correct.

4 Q. And, I guess, then the part that says unexplained  
5 would be other factors, right?

6 MR. FREEDMAN: Same objection.

7 THE DEPONENT: Yeah.

8 BY MR. EHRLICH:

9 Q. So and the number for -- what is the number for  
10 unexplained in this Blinder-Oaxaca decomposition  
11 comparison?

12 MR. FREEDMAN: Same objection.

13 THE DEPONENT: The negative 6.1.

14 BY MR. EHRLICH:

15 Q. And so if there were no other factors to consider  
16 other than the ones they ruled out and the citizenship  
17 question then this entire 6.1 would be due to the  
18 citizenship question, correct?

19 MR. FREEDMAN: Same objection.

20 THE DEPONENT: I don't feel entirely comfortable  
21 with that interpretation of the model given the set of  
22 assumptions and controls. So --

23 BY MR. EHRLICH:

24 Q. So this is taking into account the factors that  
25 they controlled for, correct, that we looked at in Table A-

1 14?

2 MR. FREEDMAN: Same objection.

3 THE DEPONENT: And as I explained in my report  
4 very briefly, you know, I think that they may have over  
5 controlled for some things.

6 BY MR. EHRLICH:

7 Q. Got it.

8 A. So but generally, I think your general sense of  
9 the interpretation I believe is also my interpretation of  
10 their analysis.

11 Q. Okay. And so is it fair to say that that 6.1  
12 unexplained difference according to the Blinder-Oaxaca  
13 decomposition comparison incorporates a number of other  
14 unobserved factors?

15 MR. FREEDMAN: Object to form and foundation.

16 THE DEPONENT: No.

17 BY MR. EHRLICH:

18 Q. Can you explain?

19 A. It accounts for some observed factors.

20 Q. Isn't it right that the observed factors are the  
21 explained part?

22 MR. FREEDMAN: Same objection.

23 THE DEPONENT: So the -- oh, so they explained  
24 accounts for the observed, yeah.

25 BY MR. EHRLICH:

1 Q. And the non-explained is the unobserved factors,  
2 right?

3 MR. FREEDMAN: Same objection.

4 THE DEPONENT: Assuming, you know, with those  
5 modeling assumptions, yes.

6 BY MR. EHRLICH:

7 Q. And the observed factors includes the citizenship  
8 question, right?

9 MR. FREEDMAN: Same objection.

10 THE DEPONENT: So the explained are -- there are  
11 variables in A-14.

12 BY MR. EHRLICH:

13 Q. And the citizenship is not in A-14, right?

14 A. Correct.

15 Q. And so that would fall into the unexplained  
16 column in Table 8?

17 MR. FREEDMAN: Same objection.

18 BY MR. EHRLICH:

19 Q. Or row. Sorry. Is that right?

20 A. I think. I feel like I'm getting a little bit  
21 muddled in the conversation, but yeah.

22 Q. Sure. So I'm just trying to, I'm just trying to  
23 clarify what the 6.1 is in the Blinder-Oaxaca  
24 decomposition. And so when you account for the factors  
25 that's in the explained row of Table 8 explaining the

1 Blinder-Oaxaca decomposition, is that right?

2 MR. FREEDMAN: Object to form and foundation.

3 THE DEPONENT: Again, you know, I think my  
4 interpretation of their analysis is consistent with that,  
5 yes.

6 BY MR. EHRLICH:

7 Q. Okay.

8 A. But I also don't want to --

9 Q. I understand. But the -- so the unexplained row  
10 includes other factors that weren't listed in Table A-14,  
11 one of which is the citizenship question, is that right?

12 MR. FREEDMAN: Object to form and foundation.

13 THE DEPONENT: I think if I interpret that  
14 correctly, yes.

15 BY MR. EHRLICH:

16 Q. Okay. And there are other factors along with the  
17 citizenship question that also are not considered in that  
18 6.1?

19 MR. FREEDMAN: Same objection.

20 THE DEPONENT: Correct.

21 BY MR. EHRLICH:

22 Q. Okay. There's a lot of math. And then just  
23 turning briefly to Table 9, and feel free to review as much  
24 as you need to, to understand the table.

25 (Pause.)

1 A. Okay.

2 Q. So the bottom panel of Table 9 -- strike that.

3 The Table 9 uses the 2016 ACS, right?

4 A. Correct.

5 Q. Whereas Table 8 had used the 2010 ACS?

6 A. That is my interpretation of their analysis, yes.

7 Q. So the -- is it fair to say that this is -- that

8 Table 9 is essentially updating Table 8 using the 2016 ACS

9 numbers?

10 MR. FREEDMAN: Object to form and foundation.

11 THE DEPONENT: That is my interpretation of their

12 analysis, yes.

13 BY MR. EHRLICH:

14 Q. Okay. So that looking at the bottom panel of

15 Table 9, this difference in differences what -- strike

16 that. The bottom panel of Table 9, what is the difference

17 in differences between the AR and ACS all citizen

18 households and all other households?

19 MR. FREEDMAN: Object to form and foundation.

20 THE DEPONENT: Negative 5.8.

21 BY MR. EHRLICH:

22 Q. Okay. And that's essentially the same as the

23 negative 6.8 in Table 8 except it's using the 2016 ACS data

24 instead?

25 MR. FREEDMAN: Object to form and foundation.

1 BY MR. EHRLICH:

2 Q. Is that right?

3 A. I think that's my interpretation of -- I mean, I  
4 think that's correct based on my review of their analysis.

5 Q. Okay. Can we turn to page 54? That's Bates  
6 stamp 9886. So the bottom paragraph, last sentence. Can  
7 you read what that says?

8 A. The implication is that adding a citizenship  
9 question to the 2020 census would lead to lower  
10 self-response rates in households potentially containing  
11 non-citizens resulting in more non-response follow-up field  
12 work, more proxy responses, and a lower quality population  
13 count.

14 Q. The authors don't use the 5.8 number we just  
15 looked at, right?

16 MR. FREEDMAN: Object to form and foundation.

17 BY MR. EHRLICH:

18 Q. In that paragraph about conclusions.

19 MR. FREEDMAN: Object to form.

20 THE DEPONENT: They don't specifically reference  
21 5.8, no.

22 BY MR. EHRLICH:

23 Q. Do they cite any projection of how much  
24 self-response would be reduced for households potentially  
25 containing non-citizens?

1           MR. FREEDMAN: Object to form. You talking about  
2 in the report or in that specific sentence?

3           MR. EHRLICH: In this conclusion paragraph.

4           THE DEPONENT: No, they don't specifically  
5 reference any of their precise estimates in the conclusion  
6 paragraph.

7           BY MR. EHRLICH:

8           Q. And their conclusions only relate to households  
9 containing non-citizens, right?

10          MR. FREEDMAN: Object to form.

11          THE DEPONENT: That is correct.

12          BY MR. EHRLICH:

13          Q. Okay. I want to turn to one of the other  
14 conclusions we were discussing at the beginning about how  
15 the self-response, the differential self-response rate will  
16 not be corrected by outreach and NRFU. Is that one of the  
17 conclusions that you reached?

18          MR. FREEDMAN: Object to form.

19          THE DEPONENT: Yes.

20          BY MR. EHRLICH:

21          Q. Okay. Can you describe the basis for your  
22 conclusion that increased outreach through the integrated  
23 partnership and communications campaign will not fully  
24 address the differential self-response rate?

25          MR. FREEDMAN: Object to form.

1 THE DEPONENT: Sure. As I outlined in my  
2 report --

3 BY MR. EHRLICH:

4 Q. I'm sorry. Can you set aside the report?

5 A. Oh, sure.

6 MR. FREEDMAN: You want her to do it from memory?  
7 I mean is that --

8 MR. EHRLICH: Yeah. I'm talking generally about  
9 her conclusions right now.

10 MR. FREEDMAN: I mean, she -- I mean there's like  
11 pages of analysis.

12 MR. EHRLICH: I understand.

13 THE DEPONENT: So in terms of --

14 MR. FREEDMAN: Hold on. Hold on. Object to  
15 form. Go ahead.

16 THE DEPONENT: So in terms of the outreach  
17 campaign, the concern about its ability to correct the  
18 differential self-response is partly just based on the fact  
19 that they haven't done the research that the Census Bureau  
20 deems necessary to do, but ultimately was cancelled because  
21 of budgetary concerns. Second, to the extent that they  
22 have started doing research for the communications  
23 campaign, it points to all the issues that I talk about in  
24 my report, and that we know is this climate that makes the  
25 census count more challenging. And so, you know, there is

1 no evidence that the communications campaign is going to  
2 somehow be able to fix the differential self-response that  
3 is attributable to the addition of the citizenship  
4 question. And some of the internal research suggests that  
5 confidentiality concerns in particular can be especially  
6 difficult to influence. My own research, the book that I  
7 wrote on the 2000 census was focused on the ability to have  
8 an effect on self-response with a communication campaign.  
9 There are a number of challenges that I haven't seen the  
10 Census Bureau be able to address, in part because they  
11 haven't been able to do the research. We also face a more  
12 fragmented communication environment than we did in 2010.  
13 That complicates how you actually get your message to the  
14 people that you intend to reach. Some of the, you know,  
15 critical players for the communication campaign are the  
16 trusted voices. There has been concern that the trusted  
17 voices are not going to be able to -- be able to make a  
18 compelling case in their committees to increase  
19 self-response. I have a, I hope, a far more coherent  
20 explanation in my report that I'm happy to reference if it  
21 would be useful.

22 BY MR. EHRLICH:

23 Q. Sure. We'll get to your report in a little bit.  
24 So when you were talking about the -- you were talking  
25 about the internal research the census has done on this, is

1 that right?

2 A. Um-hmm.

3 Q. Can you describe what that research was?

4 MR. FREEDMAN: Object to form.

5 THE DEPONENT: So I know they have CBAMS and I  
6 didn't get the updated CBAMS for this time around. But  
7 looking at CBAMS for 2010 points to concerns about  
8 confidentiality among Hispanics. And so that was, again,  
9 one of the indications of this hard to count group. There  
10 was a CSM research project on administrative records that I  
11 recall. I can't remember who the authors were in the  
12 Census Bureau who were looking specifically at attitudes  
13 about administrative records. And that was the one that  
14 said that privacy attitudes could be moved, but  
15 confidentiality concerns couldn't.

16 BY MR. EHRLICH:

17 Q. Was the 2010 CBAMS that you reviewed was that a  
18 qualitative assessment of people's attitudes?

19 A. No. There was -- these are survey -- I mean,  
20 I've seen both qualitative and also survey-based estimates.

21 Q. Okay. And in what context was the 2010 CBAMS  
22 conducted?

23 MR. FREEDMAN: Object to form and foundation.

24 THE DEPONENT: I believe that it was conducted in  
25 2008 to, again, inform the communications campaign going

1 into 2010.

2 BY MR. EHRLICH:

3 Q. Okay. And can you describe the CSM research that  
4 you were just referencing?

5 A. Not beyond the description I gave about  
6 reviewing.

7 Q. Without reviewing your report?

8 A. Yeah. I'm happy to find the citation, if it's  
9 useful.

10 Q. Are there any other sources that you reviewed in  
11 reaching your conclusion that the differential  
12 self-response rate will not be -- will not be fully  
13 addressed by the outreach campaign?

14 MR. FREEDMAN: Do you want her to consult her  
15 report?

16 MR. EHRLICH: No.

17 MR. FREEDMAN: You just want a memory test of  
18 like how much -- whether she remembers anything else?

19 MR. EHRLICH: No. I would just like her to  
20 answer the questions I'm asking.

21 MR. FREEDMAN: You've been promising for almost  
22 two hours that she would be allowed to consult her report.  
23 So at some point, I think you should ask her questions  
24 about what's actually in her report rather than conducting  
25 a memory test. She can answer if she remembers --

1           MR. EHRLICH: I would just like her to answer the  
2 questions that I'm asking. We'll look at the report when  
3 we look at the report.

4           THE DEPONENT: I don't remember anything  
5 specifically else.

6           BY MR. EHRLICH:

7           Q. Okay.

8           A. I'm happy to take a look at my report, if you  
9 want me to.

10          Q. Do you know if the 2010 CBAMS included -- that  
11 you reviewed included research on reactions to a  
12 citizenship question?

13          A. Did not.

14          Q. How about the CSM research that you reviewed?

15          A. It did not. This is one of the big gaps in  
16 knowledge is that the research hasn't been conducted  
17 specifically about the citizenship question and the  
18 attitudes about it. I don't know what research is going on  
19 right now but --

20          Q. Understood. You mentioned your book on the 2000  
21 census. Can you describe your conclusions in the book?

22                 MR. FREEDMAN: Object to form.

23                 THE DEPONENT: Dust those off, those cobwebs.  
24 It's been awhile. But what we find is that concerns about  
25 privacy at the time depressed cooperation among those who

1 have privacy concerns because of the salience of that  
2 issue. So in that sense it was really highlighting the  
3 importance of the macro environment in terms of people's  
4 willingness to complete. We also looked at the impact of  
5 the communication campaign, and found an increase  
6 particularly in awareness of the census over the course of  
7 that communications campaign. And so my take away would be  
8 that communications can have an effect on cooperation at  
9 the same time that this macro environment really matters  
10 particularly for subgroups who might consider questions to  
11 be particularly sensitive. It's a different set of issues  
12 in 2000. But in terms of that underlying model of survey  
13 response that it's essentially the same.

14 BY MR. EHRLICH:

15 Q. Did the 2000 census have a citizenship question?

16 A. It did not.

17 Q. It did not on the short form, right?

18 A. Correct.

19 Q. On the long form did it have one, a citizenship  
20 question?

21 A. I don't think it did actually. Did it? I'm --

22 Q. It was a long time ago.

23 A. It was long -- yeah, sorry.

24 Q. That's okay.

25 A. I should know that, and my mind is fuzzy with

1 cough medicine.

2 MR. FREEDMAN: I'll interpose an objection that  
3 there's better evidence than asking you --

4 THE DEPONENT: Right.

5 MR. FREEDMAN: Go ahead.

6 BY MR. EHRLICH:

7 Q. And so you mentioned the internal research from  
8 the Census Bureau including the 2010 CBAMS and the CSM  
9 research, and you mentioned your book on the 2000 census in  
10 terms of materials you consulted for supporting your  
11 conclusion that the outreach campaign will not fully  
12 mitigate the issues with differential self-response. Is  
13 that right?

14 MR. FREEDMAN: Object to form. Mischaracterizes  
15 her testimony.

16 THE DEPONENT: I can't remember if one of the  
17 things that I also relied on was some of the qualitative  
18 evidence the Census Bureau. Certainly the qualitative  
19 evidence from the Census Bureau was relevant to my overall  
20 opinion. And so I'm happy to talk about it.

21 BY MR. EHRLICH:

22 Q. But what qualitative evidence was that?

23 A. So there was the focus groups. Most recently  
24 there's the focus groups from the CBAMS that I've just now  
25 seen that wasn't incorporated into my report. There was

1 the report from a couple of members of the CSM about  
2 spontaneous concerns about confidentiality that came about  
3 not in a focus group dedicated to understanding what the  
4 impact of the citizenship question, which in some way is  
5 actually even more compelling about the importance because  
6 these were things that were volunteered in discussions  
7 about, I think, it was language testing for instance. And  
8 so that -- those AAPOR presentations were something that I  
9 did rely on.

10 Q. What is AAPOR?

11 A. American Association of Public Opinion  
12 Researchers. It's a national organization that is a big  
13 organization for survey methodologists.

14 Q. Got it. And you said that was qualitative  
15 research from focus groups?

16 A. Qualitative in -- I mean, I can review if you'd  
17 like, but my recollection is, is that there was qualitative  
18 research from focus groups not specific to the citizenship  
19 question in which people spontaneously brought up issues of  
20 confidentiality.

21 Q. Got it. Can you think of any other sources right  
22 now that you consulted in reaching your conclusion that the  
23 differential self-response rate will not be fully mitigated  
24 by the outreach campaign?

25 MR. FREEDMAN: Again, you want her to do that

1 from memory, not consult what's actually in her report?

2 MR. EHRLICH: I just asked her if she can think  
3 of any other ones that she consulted right now.

4 THE DEPONENT: Not off the top of my head. I'm  
5 certain I have 176 footnotes, as people have mentioned. So  
6 I am certain that I might have others that I'm happy to  
7 talk about.

8 BY MR. EHRLICH:

9 Q. Okay. But without the report in front of you  
10 that's --

11 A. Yeah.

12 Q. Okay. Those are all the sources you recall right  
13 now? Right?

14 A. True.

15 Q. Okay. Can you turn back to Exhibit 4, which is  
16 the Census Bureau authors and their white paper?

17 A. Uh-huh.

18 Q. Page 42, please. The second paragraph here, can  
19 you read the first sentence of that paragraph?

20 A. Using these estimates as well as the data in  
21 Table 12, we can develop cautious estimates of the data  
22 quality and cost consequences of adding the citizenship  
23 question to the enumeration form.

24 Q. And when that sentence says these estimates, do  
25 you know what that is referring to?

1 MR. FREEDMAN: Object to form and foundation.

2 THE DEPONENT: I don't without review. But I  
3 presume they're referencing in part the 5.8 difference in  
4 difference.

5 BY MR. EHRLICH:

6 Q. We've already talked about where that comes from  
7 extensively.

8 A. Um-hmm.

9 Q. But that number is an attempt to figure out the  
10 possible drop in self-response rate for households  
11 potentially containing non-citizens, right?

12 MR. FREEDMAN: Object to form and foundation.

13 THE DEPONENT: Can you state that again?

14 BY MR. EHRLICH:

15 Q. Sure. That 5.8 difference in differences was an  
16 attempt to estimate the potential drop in differential  
17 self-response for households potentially containing non-  
18 citizens.

19 MR. FREEDMAN: Object to form and foundation.

20 THE DEPONENT: Not potentially containing. The  
21 ones that have been identified, I believe, as not being all  
22 citizens. And, of course, with the assumptions made in  
23 calculating the estimate. But, yes, it is an estimate of  
24 the impact on self-response.

25 BY MR. EHRLICH:

1           Q.    So if the households did not contain all  
2   citizens, then it was included in the latter group of every  
3   other household, right?

4                   MR. FREEDMAN:  Object to foundation.

5                   THE DEPONENT:  I --

6                   BY MR. EHRLICH:

7           Q.    You can feel free to review if you'd like.

8           A.    So I believe the 5.8, and this is from my memory,  
9   but this is their analysis.  So, you know, I'm happy to be  
10  corrected.  I believe that the difference between the 5.1  
11  and the 5.8 is the assumption made about individuals who --  
12  for whom citizenship is missing in the administrative  
13  record.  And that the 5.1 assumes that those individuals  
14  are citizens, and so it puts them in that part of the  
15  comparison, and the 5.8 does not.  But that's just my  
16  recollection of, you know, of their analysis.

17          Q.    Got it.

18          A.    And then I -- my understanding of this sentence  
19  is to say we take the self-response estimate that we have  
20  as long as we buy all the assumptions that go into that  
21  estimate, and that we can then look at what that means in  
22  terms of cost consequences and some data quality.

23          Q.    Got it.  And that sentence also says that the  
24  data from Table 12.  Can you describe what the data in  
25  Table 12 is?

1 MR. FREEDMAN: Object to the foundation.

2 THE DEPONENT: Sure. My interpretation of their  
3 analysis here is that they are comparing the quality of  
4 proxy respondents in the NRFU operation compared to those  
5 who are self-responding. Which in 2010 self-responding was  
6 a mail-back, whereas in 2010 for most people that would be  
7 an Internet completion.

8 BY MR. EHRLICH:

9 Q. So looking at this bottom paragraph of page 42,  
10 seems to go into page 43. Can you describe what that  
11 analysis is doing?

12 MR. FREEDMAN: Object to form and foundation.

13 THE DEPONENT: I'm happy to review the paragraph.

14 BY MR. EHRLICH:

15 Q. Sure.

16 A. If you want me to interpret their analysis.

17 (Pause.)

18 A. So to summarize their analysis what they're doing  
19 is with some additional assumptions which, by the way, one  
20 of the assumptions it's a pretty big stretch is to say that  
21 anyone who is a citizen household will not be affected by  
22 the citizenship question. But that's in my report. So  
23 they're saying, okay, if we take that 5.8 percent, we can  
24 then look at what the projected increase is in NRFU, and we  
25 could look to see how likely we are to get, you know, the

1 increase in proxy responses instead of self-responses. And  
2 then the subsequent -- what that means in terms of the  
3 projected whole person imputations and erroneous  
4 enumerations. And then ultimately what that means in terms  
5 of being linkable to administrative records. And the key  
6 takeaway of these numbers, again, these numbers are resting  
7 on some assumptions that I call into question in my report  
8 in rebuttal. But still the takeaway is not one that I  
9 disagree with. And that is, is that you're going to see  
10 lower data quality because proxy respondents don't give as  
11 good data as a self-response.

12 Q. When you say data quality, what do you mean by  
13 that?

14 A. So that has a very specific meaning. Data  
15 quality has defined in terms of utility integrity and  
16 objectivity. In common usage you think of data quality as  
17 kind of accuracy. And so that's how I was using it right  
18 there. But in terms of data quality there, you know, is a,  
19 is kind of this broader definition. And actually but it  
20 does apply here, right? Because if you're using -- if you  
21 have a high percentage of imputations and proxy  
22 respondents, then the utility of the resulting data is  
23 potentially lower because it's lower, less accurate. And  
24 so these things are all linked together.

25 Q. And when you're talking about accuracy, you're

1 talking about the quality of the data you're receiving, is  
2 that right?

3 A. Getting the right answer.

4 Q. For the questions on the form, right?

5 A. Correct.

6 Q. But you're not referring to the actual count of  
7 people?

8 A. Correct.

9 Q. Does this Census Bureau analysis that you just  
10 reviewed, does that say anything about possible net  
11 undercounts?

12 A. It does not. Except actually, well, no, it does  
13 not.

14 Q. Can we go back to Exhibit 3 for a moment? This  
15 is the January 19th memo to Secretary Ross again. And  
16 you've reviewed this before today, right?

17 A. Correct.

18 Q. Does this analysis contain the same type of  
19 analysis that we've just looked at for Exhibit 4 in terms  
20 of possible increases in cost for NRFU?

21 MR. FREEDMAN: Object to form and foundation --

22 THE DEPONENT: Section B-4 is a cost analysis. I  
23 don't know if that's what you're --

24 BY MR. EHRLICH:

25 Q. And so turning to page 1282, the second paragraph

1 from the bottom. This is talking about an increase in NRFU  
2 workload, right? And the associated cost?

3 MR. FREEDMAN: Object to form.

4 THE DEPONENT: Correct.

5 BY MR. EHRLICH:

6 Q. I'm sorry. And when I say NRFU you know I mean  
7 non-response follow-up?

8 A. Correct.

9 Q. Okay. Does this analysis have any discussion of  
10 net undercount?

11 MR. FREEDMAN: Object to form.

12 THE DEPONENT: It does not.

13 MR. EHRLICH: Can we take a quick break?

14 MR. FREEDMAN: Sure.

15 (Off the record at 11:34 a.m.)

16 (On the record at 11:50 a.m.)

17 MR. EHRLICH: I'm handing you Exhibit 5.

18 (DOJ Exhibit marked for identification.)

19 BY MR. EHRLICH:

20 Q. It's the expert report and declaration of D.  
21 Sunshine Hillygus, PhD. Do you recognize this?

22 A. I do.

23 Q. I'd just like to walk through this report a  
24 little bit. Can you turn to page 4, please? And the  
25 bottom paragraph that says the undercount. Can you read

1     that first sentence?

2           A.     Although the U.S. Census Bureau has the goal to  
3     count everyone once, only once and in the right place,  
4     scientific measurements of census accuracies since 1940  
5     have shown a persistent and disproportionate undercount of  
6     some population subgroups, including racial and ethnic  
7     minorities -- and children immigrants.

8           Q.     Can you describe the basis for your opinion that  
9     the -- that census accuracies since 1940 have shown  
10    persistent and disproportionate undercounts of immigrants?

11           MR. FREEDMAN:   Object to form.

12           THE DEPONENT:   So there's a considerable basis of  
13    research, like, De la Puente, the ethnography researches  
14    are some of the ones that have looked at the differential  
15    undercount in particular. And I talk a little bit more  
16    about that later in the report.

17           BY MR. EHRLICH:

18           Q.     And what does that research show?

19           A.     Just that the hard to count population, the  
20    Census Bureau recognizes these groups as hard to count  
21    populations, are less likely to be counted.

22           Q.     Fair enough. And there's a specific -- is there  
23    a Census Bureau analysis on the disproportionate  
24    undercounts of immigrants?

25           MR. FREEDMAN:   Object to form.

1           THE DEPONENT: So in terms of the Post  
2 Enumeration Survey and the demographic analyses that are  
3 the specific coverage measurement of the Census Bureau,  
4 that that -- I don't believe immigrants have been included  
5 as a subgroup. However, there is Census Bureau research,  
6 ethnographies and other research that certainly has looked  
7 at the undercount of immigrants.

8           Q. And what -- are those?

9           A. The one that comes to mind immediately is De la  
10 Puente. But, you know, I can look through it.

11          Q. Sure. Do you cite that in here?

12          A. Yeah. So in looking at the differential  
13 undercount, my recollection of some of the citations that  
14 are particularly valuable for this particular point might  
15 be Kissam (ph.) from 2017, the differential undercount of  
16 Mexican immigrant families in the U.S. census. I don't  
17 believe that's a Census Bureau person, but and then De la  
18 Puente, 1993, why are people missed or erroneously  
19 enumerated in the census, a summary of findings from  
20 ethnographic research would be another. In my rebuttal the  
21 Fine and West, the exploratory assessment of the 1986 Los  
22 Angeles test census.

23          Q. I'm sorry. You're looking at your rebuttal?

24          A. So that I think that's not cited in my main  
25 report.

1 Q. Okay. Let's just focus on the main report now.  
2 Turn to page 5, the first full paragraph. It says, at the  
3 same time as the decennial census count -- decennial count  
4 undercount some segments of the population decennial has  
5 also overcounted whites in 2000 and 2010 censuses largely  
6 as a result of double counting those with second homes or  
7 those with college students away from home. Can you  
8 describe your basis for the basis that whites have been  
9 overcounted in 2000 and 2010 due to double counting of  
10 those with second homes or college students?

11 A. Yeah. That's just one, one explanation for how  
12 you can end up with overcounting.

13 Q. Okay.

14 A. Yeah.

15 Q. Did that come from somewhere?

16 A. I mean, we talk about it my 2006 book, and I  
17 mean, you know, I think that in terms of attributing  
18 explicitly duplications that is my, you know, general  
19 understanding as opposed to that I can give you a specific  
20 citation to those particular factors. Those are model  
21 factors that explain the overcounting.

22 Q. Okay. So you're just saying that these are a  
23 couple of factors that contribute --

24 A. Yeah.

25 Q. -- to that?

1           A.     For sure.

2           Q.     Okay. Can we go to page 7, please? Can you read  
3 the second sentence of Footnote 21?

4           A.     Incentives are obviously not a relevant factor  
5 for the decennial census, but this example highlights the  
6 way the survey design decisions can shape the respondent  
7 participation.

8           Q.     Okay. When you say incentives there, what do you  
9 mean?

10          A.     So what I was referencing was the fact that when  
11 we think about the survey participation decision that  
12 people might have characteristics that make them more or  
13 less likely to participate in a survey. But their decision  
14 to actually participate or not depends not only on their  
15 characteristics but also the design of the survey and the  
16 external environment. The design of the survey includes a  
17 wide variety of different factors, and that can include the  
18 questionnaire, the question order. It can include the mode  
19 of the survey. And incentives refers to if you give  
20 somebody money or sometimes the incentives are not actually  
21 money. They might be points if it's some type of survey.  
22 But those incentives can affect somebody's decision about  
23 whether to participate or not. We don't give people  
24 incentives, you know, for the -- for a census survey.  
25 However, there was reference in Secretary Ross's memo about

1 a Nielson study, and so it was pointed out that was one of  
2 the ways in which it's different, and all of those design  
3 decisions matter.

4 Q. Got it. So for the census there's no financial  
5 incentive, right?

6 A. So what we term in survey methodology as an  
7 incentive is the -- in exchange for your completion you  
8 will receive a gift card or a check or points.

9 Q. And that doesn't happen in the census?

10 A. That does not happen in the census.

11 Q. Okay. If only.

12 A. Yeah.

13 Q. But there -- is there such a thing as negative  
14 incentives? So let me ask a different question. Is  
15 responding to the census required by law?

16 A. It is.

17 Q. And do you know if there's criminal penalties for  
18 not answering the census?

19 MR. FREEDMAN: Object to form.

20 THE DEPONENT: My understanding is that there has  
21 not been a prosecution in a very long time.

22 BY MR. EHRLICH:

23 Q. But they exist?

24 A. It is my understanding that the Department of  
25 Justice, I believe, could, yes.

1           Q.   And so are these criminal penalties some sort of  
2   incentive for people to answer the census?

3                   MR. FREEDMAN:   Object to form.

4                   THE DEPONENT:   It is not the way that survey  
5   methodologists would think about it.  We refer to an  
6   incentive as a very explicit part of the survey design.  
7   Certainly the mandatory nature of the census is one feature  
8   of the design that matters, and it matters a lot.  There is  
9   no doubt about that.  I'm not sure I would label it  
10   incentive or not.

11                   BY MR. EHRLICH:

12           Q.   Got it.

13           A.   Yeah.

14           Q.   So it's not an incentive in the terminology  
15   you're using?

16           A.   Yeah, right.

17           Q.   Okay.  How did you take into account in your  
18   analysis that the census is mandatory?

19                   MR. FREEDMAN:   Object to form.

20                   THE DEPONENT:   So one of the ways is that where  
21   possible I tried to look at research that was explicit to  
22   census, census surveys that were mandatory.  It's certainly  
23   a case that -- certainly the case that the mandatory nature  
24   of the census is a factor that does not come into play in  
25   all of the surveys that have been cited here though.

1 BY MR. EHRLICH:

2 Q. What other census surveys that you relied on also  
3 have that mandatory nature?

4 A. The ACS.

5 Q. Okay. Any other ones?

6 A. Not to my knowledge.

7 Q. Looking at the third full paragraph on page 7.  
8 I'd like to talk about this first sentence. Can you just  
9 read that for me?

10 A. For the 2020 decennial census scientific  
11 framework for thinking about survey participation would  
12 best predict that the subgroups in the population  
13 disproportionately concerned about the confidentiality of  
14 the citizenship question will be less likely to respond;  
15 more likely to skip the individual question, and more  
16 likely to give an inaccurate response.

17 Q. Okay. So when you say that subgroups in the  
18 population disproportionately concerned about  
19 confidentiality of the citizenship question will be less  
20 likely to respond, can you explain what you mean by less  
21 likely?

22 A. Yes. So as I explained it, the framework for  
23 understanding the survey participation decision depends on,  
24 again, both the characteristics of the individual, the  
25 characteristics of the survey, and the broader survey

1 environment. And so at issue here is that there is going  
2 to be some individuals who consider the citizenship  
3 question to be sensitive because of concerns about  
4 confidentiality. And so they will respond in a way that is  
5 different. And that could include not responding at all.  
6 It could include skipping the individual question. It  
7 might include breaking off, as we've talked about before.  
8 Or it could include providing an inaccurate response. And  
9 all of those are ways that we have seen within the survey  
10 methodology literature that people respond to sensitive  
11 items.

12 Q. Okay. Do you know -- so for the subgroups in the  
13 population that you're referring to here, do you know how  
14 much less likely they are to respond with the addition of a  
15 citizenship question?

16 A. Precisely no. But the internal Census Bureau  
17 research has their estimates. The thing that I do is I  
18 review all of the literature and the analyses, and conclude  
19 that all of the evidence cumulative to all points in the  
20 same direction, that it will be a negative effect. There  
21 is nothing that suggest to me that we would find a positive  
22 factor for instance.

23 Q. Okay.

24 A. The size of that negative effect, the Census  
25 Bureau analysis is the closest thing we have because we

1 don't have an RCT that gave a precise estimate.

2 Q. Yeah. And so when you say subgroups in the  
3 population disproportionately concerned about  
4 confidentiality would be more likely to skip the individual  
5 question, you also don't have a quantitative estimate of  
6 how much more likely they are to skip an individual  
7 question?

8 MR. FREEDMAN: Object to form.

9 THE DEPONENT: Again, all the evidence points to  
10 a impact on skipping. But I can't speak to a precise  
11 estimate of the size of that because the Census Bureau  
12 didn't do the pre-testing that would allow us to calculate  
13 that.

14 BY MR. EHRLICH:

15 Q. And would you have the same answer for some  
16 populations in terms of their likelihood to give an  
17 accurate response?

18 A. Correct.

19 Q. Okay. If you'd turn the page to page 8. Can you  
20 read the -- at the very top the census that begins as  
21 explained? Can you read that sentence?

22 A. As explained in a classic survey methodology  
23 textbook there are some ubiquitous correlates of the  
24 tendency to refuse the survey request. When the key  
25 variables of the survey are related to these attributes, we

1 can anticipate non-response biases on the respondent-based  
2 estimates.

3 Q. Can you explain what that means?

4 A. Sure. It basically says that we can rely on our  
5 existing body of scientific knowledge about survey response  
6 to be able to predict likely biases in our estimates. Or  
7 put in terms that are directly relevant here is that we can  
8 predict who is likely to be affected by the survey design  
9 that we're trying to evaluate. So the basic point I'm  
10 trying to make here I -- even though the Census Bureau  
11 didn't have the exact empirical test that would allow us  
12 to -- the RCT that I would have loved to have seen, that we  
13 can nonetheless make predictions on the basis of what we do  
14 know from survey methodology and from previous surveys.

15 Q. So what is non-response biases in  
16 respondent-based estimates?

17 A. So when we are trying to get an estimate of the  
18 population that that can be biased. It can be wrong,  
19 right, it can be inaccurate because of even non-response.  
20 It can be inaccurate because of item non-response, and it  
21 can be inaccurate because of measurement error. And so  
22 those three things that we talked about, right, that people  
23 will fail to respond, that can create biases in the  
24 estimates, and that people skip individual questions, that  
25 can create population biases in estimate. And then if some

1 people provide an inaccurate response, that can also  
2 provide biases in the estimate.

3 Q. So the respondent-based estimates part is just  
4 referring to the self-response, is that right, in  
5 determining how people will respond to a survey?

6 A. In terms of like a survey. Right. That people  
7 are providing responses.

8 Q. Okay. But so is the type of enumeration that  
9 occurs in non-response follow-up such as an in-person  
10 interview, is that a respondent-based estimate?

11 MR. FREEDMAN: Object to form.

12 THE DEPONENT: Yes. As I conceptualize it, yes.  
13 I guess I'm not entirely sure what the question is but --

14 BY MR. EHRLICH:

15 Q. Yeah. So I guess I'm trying to determine what  
16 step of the process this statement is referring to when  
17 it's talking about non-response biases in the  
18 respondent-based estimates.

19 A. So you can have non-response -- so when you think  
20 about non-response bias in the census, right, very clearly  
21 we recognize that the estimates that we get just from self-  
22 response, right, that that's a biased estimate of the  
23 population. There's a whole bunch of people who didn't  
24 respond. And so the non-response follow-up is intended to  
25 reduce that non-response bias. The point of this agreement

1 between Dr. Apav (ph.) and myself if the extent to which  
2 that non-response follow-up is going to be able to correct  
3 for that non-response bias.

4 Q. Got it. But and then at the end of the process,  
5 imputation, that's not a respondent-based estimate, right?

6 MR. FREEDMAN: Object to form.

7 THE DEPONENT: I guess it's -- that is a -- not  
8 entirely how to put those two things together. But an  
9 imputation would be an attempt to correct for non-response  
10 biases. It requires some assumptions as the Brown paper  
11 makes clear. Imputation, it's really tricky, when you're  
12 talking about the citizenship question because it's the  
13 non-ignorable missing data. So but imputation is an  
14 attempt to correct for non-response bias.

15 BY MR. EHRLICH:

16 Q. Turn to page 9, in the second full paragraph.  
17 You say extensive empirical research shows that sensitive  
18 questions can result in increased burden, which can impact  
19 data quality in a number of ways, including -- and then you  
20 list a few of the ways here.

21 A. Um-hmm.

22 Q. We've already talked about some of these, but can  
23 you describe again what these bullet points are?

24 A. Sure. So it's unit non-response or unit response  
25 rate. That's where we're spending a lot of time in this

1 case. There's item non-response. So that's skipping an  
2 individual question. There's break-offs. That's people  
3 leaving the survey. There's response accuracy or  
4 measurement error. That's people giving the truthful  
5 answer. And then the additional thing that I mention in  
6 terms of data quality is a little bit more meta, and that  
7 is the spillover effect on attitudes about surveys, about  
8 the survey sponsor and so on.

9 Q. Yeah. Could you just describe negative  
10 evaluations of surveys generally, and just describe that  
11 more for me?

12 A. Sure. If people take -- if they have a bad  
13 survey experience, then they are less likely to participate  
14 in surveys generally.

15 Q. Got it.

16 A. Specifically from the same. So where I -- my own  
17 research has focused on this that the most is with  
18 longitudinal surveys where you're trying to interview  
19 someone more than once. If somebody has a bad survey  
20 experience, they think that the questions are too sensitive  
21 or it's burdensome in terms of length or complexity, that  
22 it reduces their willingness to participate in the study in  
23 the future, and from that sponsor in the future. And so in  
24 terms of implications here, you know, I don't have the  
25 empirical study to be able to provide any explicit

1 evidence, but the concern that this raises is how does a  
2 negative experience with the census have an impact on the  
3 other census surveys and people's willingness to cooperate  
4 with the Census Bureau generally.

5 Q. And this is due to a sensitive question on the  
6 survey?

7 MR. FREEDMAN: Object to form.

8 THE DEPONENT: Explicitly it's about burden.  
9 And, yes, sensitivity is related to burden. Burden  
10 captures a variety of things.

11 BY MR. EHRLICH:

12 Q. Okay.

13 A. And there's variation across the population in  
14 terms of what people consider burdensome. And so sometimes  
15 it's, you know, this has been a lot of focus within the  
16 Census Bureau to understand burden. Burden both in terms  
17 of how difficult it is for somebody to figure out how much  
18 they pay in property taxes, as well as how sensitive an  
19 item is. And so those are just two elements of burden.

20 Q. Got it. So it's the burden that causes possible  
21 increase in negative evaluations of surveys generally?

22 A. Correct.

23 Q. And the sensitive question is one component of  
24 that burden?

25 A. Correct.

1 Q. Okay. Got it. So talking about decreasing unit  
2 non-response rates here, that same analysis would apply  
3 then, we're talking about burden?

4 MR. FREEDMAN: Object to form.

5 THE DEPONENT: Um-hmm.

6 BY MR. EHRLICH:

7 Q. Okay. And a sensitive question is one aspect of  
8 that burden?

9 A. Correct.

10 Q. That could decrease non-response rates, correct?

11 A. Correct.

12 Q. And just to go down the list. So increased  
13 burden could increase item non-response, right?

14 A. Correct.

15 Q. And a sensitive question is one aspect of that  
16 burden?

17 A. Correct.

18 Q. And increased seeing break-offs is one possible  
19 impact of increased burden and one -- I'm sorry.

20 A. Yes.

21 Q. And sensitive questions are one aspect of that  
22 burden, right?

23 A. Yes.

24 Q. Decreasing response accuracy in terms of somebody  
25 answering untruthfully is an aspect of burden, correct?

1 A. Yes.

2 Q. And a sensitive question is one aspect of that?

3 A. Correct.

4 Q. Okay. When you're talking about -- I'll just  
5 focus on decreasing unit response rates. How are you  
6 quantifying decreasing there? Or --

7 MR. FREEDMAN: Objection.

8 MR. EHRLICH: Let me rephrase.

9 BY MR. EHRLICH:

10 Q. Can you quantify the amount of decreasing unit  
11 non-response rates due to increased burden?

12 MR. FREEDMAN: Object to form.

13 THE DEPONENT: It depends on a lot of other  
14 factors. And so what I can say is that there is rich  
15 scientific literature that looks at the relationship  
16 between survey burden and response rates and the other  
17 metrics of data quality that point to a negative effect.  
18 The precise amount depends on a lot of factors.

19 BY MR. EHRLICH:

20 Q. So what are some of the other aspects of burden?

21 A. So of burden, complexity is one, and survey  
22 length is the one that Secretary Ross seems to focus on.  
23 But those are the other aspects.

24 Q. When you say complexity is one aspect of burden,  
25 do you mean of a particular question or of the survey as a

1 whole?

2           A. Both. So one of, you know, within my field one  
3 of the things that we find is viewed as particularly  
4 burdensome is if we ask a whole bunch of political  
5 knowledge questions. People hate it, right. Because they  
6 don't know the answers, and so they get frustrated, and  
7 they don't want to participate anymore. So that is an  
8 example where it's not easy to say that it's just about  
9 length. Yes. A long survey is more burdensome. But it is  
10 so much more than just length. There's a number of very,  
11 very long surveys that people are still willing to  
12 participate in. So you have to take into account a lot of  
13 factors.

14           Q. And the length of the form is one of those other  
15 factors you said?

16           A. Yes.

17           Q. And then from this paragraph also the sensitivity  
18 of the question is another one of those factors?

19           A. Yes.

20           Q. Can you think of other factors that go into  
21 burden?

22           A. Well, how hard it is. How hard a question is.

23           Q. Okay. The complexity?

24           A. Right.

25           Q. Or is it --

1           A.    And remember, remember that it's not, you know,  
2   that might be that the question itself is hard or it might  
3   mean that it's asking for people to remember something that  
4   might be difficult to remember.   So --

5           Q.    Um-hmm.   Is there any way based on the increased  
6   burden, is there a way to determine whether a particular  
7   person would -- which action a particular person would  
8   take?   So, for example, not respond entirely, skip the  
9   question or break off?

10          A.    Sure.   We can do studies.

11          Q.    Okay.   Is there -- do you know how much of an  
12   increased burden it would take to undertake one of those  
13   actions?

14               MR. FREEDMAN:   Object to form.

15               THE DEPONENT:   Again, it depends.   So in -- with  
16   respect to the census and the sensitive AFS citizenship  
17   question, it -- all this literature points to this negative  
18   effect.   In terms of a precise estimate, that's where I  
19   would say that we need empirical research to give us a more  
20   precise estimate.

21               BY MR. EHRLICH:

22          Q.    Got it.   Could we turn to page 11?

23               MR. EHRLICH:   Actually, can we go off the record?

24               (Off the record at 12:22 p.m.)

25               (On the record at 1:18 p.m.)

1 BY MR. EHRLICH:

2 Q. Okay. Can we turn to page 11 of your expert  
3 report? Footnote 44 says there are two reasons to  
4 separately consider the categories of non-citizens and  
5 Hispanics. First, citizenship cannot always be fully  
6 determined because a significant percentage of non-citizens  
7 are Hispanic. The Hispanic category captures non-citizens  
8 who would not -- who would otherwise be missed or allows  
9 for analysis that could not otherwise be conducted. Can  
10 you describe that?

11 A. Sure. It's just there are times when there are  
12 datasets that don't have citizenship status that have been  
13 used in forming an opinion here, and that's both my  
14 opinion, but also within the Census Bureau research. And  
15 at times you don't have citizenship status because there is  
16 an overlap between non-citizens and Hispanics that both the  
17 Census Bureau and I have used that as one reason to look at  
18 Hispanic as a subgroup.

19 Q. Got it. Can you turn back to Exhibit 4, which is  
20 the white paper?

21 A. Um-hmm.

22 Q. Is this one of the Census Bureau analyses that  
23 you were just referring to?

24 A. Yes. I think they do include in here some  
25 analyses just by Hispanic that they don't have citizenship

1 status for. Although a lot of it -- this is one of the few  
2 examples where you do have the overlap of the two.

3 Q. Can you explain what you mean it's one of the  
4 examples that has overlap of Hispanic and non-citizens?

5 A. The Brown paper is one of the very few examples  
6 of analyses in which we can actually look at data quality  
7 issues related to citizenship status specifically. Whereas  
8 other analyses were restricted to looking at Hispanic. But  
9 we don't have citizenship status within that.

10 Q. Got it. And that's because they used every other  
11 household as their benchmark in their analysis rather than  
12 AR non-citizen households, is that right?

13 MR. FREEDMAN: Object to form.

14 THE DEPONENT: No. This is just one of the few  
15 examples in which they are able to make use of data in  
16 which citizenship status is available. And they are able  
17 to do that through the matching of administrative records.  
18 A lot of the data quality analyses that I've looked at like  
19 with the break-offs, for instance, and the item non-  
20 response that some of that is -- it's -- we don't have it  
21 linked to data that identifies citizenship status. So  
22 we're only to -- I'm only able to look at the Hispanics  
23 generally.

24 BY MR. EHRLICH:

25 Q. Understood. So this analysis in Exhibit 4, the

1 Brown paper, in terms of their quantitative analysis in  
2 attempting to ascertain a self-response rate due to the  
3 citizenship question did they take into account Hispanics  
4 that would have an uncertain citizenship status?

5 MR. FREEDMAN: Object to form.

6 THE DEPONENT: Their primary analysis is  
7 comparing only upon citizenship. But in some of the  
8 earlier, like Figure 1 and Figure 2, they use Hispanic  
9 there.

10 BY MR. EHRLICH:

11 Q. Got it. But their later analyses about the drop-  
12 off and self-response they used all citizen versus all  
13 other, right?

14 A. Right.

15 Q. Okay. And so your language in Footnote 44 is  
16 just talking about generally the problem with evaluating  
17 surveys like -- generally evaluating research in this area?

18 A. Well, then my next sentence says offers a  
19 substantive rationale, not simply -- so the first point is  
20 to say there are some times that we use Hispanic  
21 essentially as a proxy even though we might be interested  
22 in a particular subset. And that seems to be sometimes the  
23 rationale Census Bureau analyses. The second point is to  
24 say there's actually a -- reason that we want to look  
25 explicitly at Hispanics, and that's because as evidence I

1 show that even Hispanic citizens might be impacted by the  
2 addition of the citizenship question.

3 Q. Got it. Okay. Turning to the next page. Can  
4 you read that very first paragraph for me?

5 A. Census Bureau data stewardship policies  
6 identifies citizenship as a sensitive topic. In fact, of  
7 the questions planned for the decennial short form only the  
8 citizenship question has a sensitive designation.

9 Q. And there was no other topics in there that had  
10 a -- strike that. There were no other topics that would  
11 appear on the 2020 census that had a sensitive designation  
12 in that?

13 A. So age, race and relationship to householder not  
14 in my understanding designated as sensitive items.

15 Q. Did that stewardship policy also have a category  
16 of very sensitive topics?

17 A. It did.

18 Q. Were any of the topics on the 2020 census  
19 included in that category?

20 A. I don't recall, but it seems like that was not  
21 the case.

22 Q. Okay. I'd like to talk about some of the  
23 research that you're summarizing here, if that's okay.

24 A. Um-hmm.

25 Q. Looking at page 13, the first bullet point. I

1 think this is the CSM survey you referred to earlier, is  
2 that right?

3 A. It's not a survey, but it's a memo from the CSM  
4 researchers in which they had found spontaneously within  
5 the field and in focus groups these fears among immigrant  
6 respondents.

7 Q. Got it. And in what context was this -- were  
8 these fears reported?

9 A. My recollection, although I'm happy to review to  
10 clarify if needed, was that it was a variety of different  
11 contexts. And that is part of what makes it somewhat  
12 striking is that these were, again, even in like focus  
13 groups in which the point wasn't to ask about  
14 confidentiality concerns, the point was to do, say language  
15 testing. And yet these issues were being raised. And from  
16 my standpoint that makes it all the more reason that that  
17 is a striking piece of qualitative evidence.

18 Q. Got it. And was this memo about Hispanic  
19 citizens in particular?

20 A. I don't know if there was any reference to  
21 Hispanic citizens in the memo. I don't remember that.

22 Q. But it says -- the quote you have here is a new  
23 phenomena the field -- oh, sorry, in the field, and  
24 reported that respondents fears particularly among  
25 immigrant respondents have increased markedly this year.

1 Is that right?

2 A. Correct. I don't know if there was any  
3 distinction between Hispanics who are citizens, Hispanics  
4 generally or just --

5 Q. Got it --

6 A. -- immigrants.

7 Q. Okay. Got it. The next bullet point, a  
8 research presentation. Says that in a research  
9 presentation at the American Association of Public Opinion  
10 Research census researchers Mikelyn Meyers and Patricia  
11 Gorman explained that respondents were spontaneously  
12 expressing concerns about confidentiality during multi-  
13 lingual pre-testing projects conducted in 2017.  
14 Respondents referenced legal residency status, immigration  
15 and certain current events like changes to the DACA  
16 program. Do you know if this presentation differentiated  
17 Hispanic citizens from non-citizens?

18 A. I don't know that.

19 Q. And this -- they were talking about fears that  
20 were raised during multi-lingual pre-testing projects,  
21 right?

22 A. Correct.

23 Q. And so this was not some sort of research on the  
24 census specifically?

25 MR. FREEDMAN: Object to form.

1           THE DEPONENT: On the census, yes. But not on  
2 the citizenship question.

3           MR. EHRLICH: I'm not sure I follow that. Sorry.

4           MR. FREEDMAN: Question was about the census --

5           THE DEPONENT: Right. So these are Census Bureau  
6 researchers referencing research about the census, but it  
7 wasn't research was explicit to the addition of a  
8 citizenship question.

9           BY MR. EHRLICH:

10          Q. Got it. Got it. And was this a -- would you  
11 define this as a quantitative analysis or a qualitative  
12 analysis?

13          A. Qualitative.

14          Q. And I don't think I asked this for the first one,  
15 but the Center for Survey Management memorandum qualitative  
16 or quantitative?

17          A. Qualitative.

18          Q. Okay.

19          A. And, in fact, I'm not sure that I would call the  
20 first one an explicit research design. It was an  
21 observation of researchers. So in some ways it's far  
22 broader than a single research question.

23          Q. And neither of those were gauging reactions to a  
24 citizenship question in particular, right?

25          A. Correct.

1 Q. The third bullet here, in a study of qualitative  
2 interviews to do language testing, census researchers have  
3 said immigrants they interviewed spontaneously raised  
4 topics like the travel ban and dissolution of the deferred  
5 action for childhood arrivals, program that has protected  
6 from deportation young immigrants brought to the country as  
7 children without legal status. What study of qualitative  
8 interviews are you referencing there?

9 A. I'm guessing it's probably the same, the same  
10 one.

11 Q. From the prior bullet?

12 A. Yeah, yeah.

13 Q. Okay. The next bullet going on to 14. This is  
14 talking about a presentation to the National Advisory  
15 Committee by Mikelyn Meyers. Is that right?

16 A. Um-hmm.

17 Q. And there she discussed unprecedented ground  
18 swell and confidentiality in data sharing concerns  
19 particularly among immigrants or those who live with  
20 immigrants may present a barrier to participation in the  
21 2020 census. And this was also referring to immigrants,  
22 right?

23 A. Correct.

24 Q. Did it differentiate between citizens and non-  
25 citizens?

1           A.    I don't recall that it did.

2           Q.    Okay. And the presentation weren't talking about  
3 reactions to a citizenship question in particular, right?

4           A.    Correct.

5           Q.    And this is another, you would say qualitative  
6 way of trying to determine?

7           A.    Yes. I think it's -- I suspect referencing some  
8 of the same research, qualitative research.

9           Q.    In the next paragraph you're talking about the  
10 2011 CBAMS. And CBAMS is the Census Barriers Attitudes and  
11 Motivators Survey, is that right?

12          A.    I believe that's correct.

13          Q.    Okay. So we know what each other is talking  
14 about for that. Says a cluster analysis identified -- I'm  
15 sorry. In the second sentence. A cluster analysis  
16 identified five distinct attitudinal segments or mindsets  
17 within the population, including 14 percent labeled  
18 suspicious, which is described as a segment, which has the  
19 lowest self-reported intent to respond to the census, and  
20 are mostly likely to believe that the census can harm them.  
21 And then the next sentence goes on talking about Hispanics  
22 making up a disproportionate share of this mindset, right?

23          A.    Um-hmm.

24          Q.    Did this differentiate between Hispanic citizens  
25 and Hispanic non-citizens?

1           A.    No.   CBAMS did not ask for the citizenship  
2   status.

3           Q.    Got it.   And this CBAMS is in testing for the  
4   census, but it's not -- can you describe CBAMS, please?

5           A.    To the best of my knowledge, yes.   CBAMS is  
6   intended to measure the attitudes and motivators and help  
7   to inform the challenges that the Census Bureau has in  
8   increasing self-response.   And this particular analysis, I  
9   have no idea if they've done a similar type of analysis of  
10   the survey data.   I've seen the survey questionnaire is all  
11   for the 2020.   But I think the earlier CBAMS is telling in  
12   that this concern about confidentiality seems  
13   disproportionately to affect Hispanics.

14          Q.    Yeah.   And we didn't -- I think you mentioned  
15   this, but that CBAMS did not talk about citizenship status,  
16   right?

17          A.    Correct.   And it's actually quite striking to me  
18   that the CBAMS does not include a citizenship question, and  
19   they ask about foreign born status but not citizenship, and  
20   it's -- I wonder why.

21          Q.    And this was the 2011 CBAMS, right?

22          A.    Um-hmm.

23          Q.    Okay.   And moving down the page, it says these  
24   findings are also apparent in public opinion polling data.  
25   Can you describe what public opinion polling data is?

1           A.     Sure. I'm just referencing here survey data that  
2     has been conducted outside of the Census Bureau for the  
3     purposes of generalizing about some population of interest  
4     about attitudes and behaviors.

5           Q.     So how would a public opinion poll be conducted?  
6     Would it be by phone?

7                     MR. FREEDMAN: Object to form.

8                     THE DEPONENT: There's a variety of different  
9     ways to do that. You can do telephone. You can do mail.  
10    You can do Internet.

11                    BY MR. EHRLICH:

12           Q.     Okay. So going to the first one, for example,  
13    UCLA Luskin Institution Survey of Los Angeles County in  
14    2017 found that 56 percent of Latinos report being worried  
15    about the deportation of themselves or a friend or a family  
16    member compared to only 19 percent for whites. Is that  
17    right?

18           A.     Correct.

19           Q.     This seems to reference Latinos. Is that  
20    basically a synonym for Hispanics?

21           A.     Correct.

22           Q.     Okay. And did this study differentiate between  
23    Hispanic citizens and Hispanic non-citizens?

24           A.     I'm trying to recall if the study did or not. It  
25    might have. I don't remember.

1 Q. Okay.

2 A. I'm embarrassed I didn't include the citation  
3 here specifically to the study. But the full report is  
4 available.

5 Q. Um-hmm.

6 A. Online Googling.

7 Q. And this study was not specifically talking about  
8 the census, right, confidentiality of the census?

9 A. Correct.

10 Q. Okay. Or the confidentiality of asking a  
11 citizenship question on the census, for example?

12 A. Correct.

13 Q. Okay. The next one, next bullet down, in  
14 national poll of Hispanics following the 2016 election, Pew  
15 Research Center found that 47 percent of all Hispanics have  
16 a lot or some worry that they, a family member or a close  
17 friend would be deported. It says the numbers were even  
18 higher for foreign born Hispanics or foreign born U.S.  
19 citizens and 66 percent for non-citizens. Is that right?

20 A. Correct. That would be 66 percent of non-citizen  
21 Hispanics.

22 Q. Got it. That's higher than the 47 percent for  
23 all Hispanics, right?

24 A. Correct.

25 Q. And higher than the foreign born U.S. citizen

1 Hispanics?

2 A. Correct.

3 Q. Okay. And this was, again, general fears of  
4 deportation, right?

5 A. Right.

6 Q. And this was not related to the census?

7 A. Correct. These are all indicators of the broader  
8 macro environment, which is -- I outlined in the beginning  
9 part of the calculation for somebody's decision to  
10 participate in a survey or not.

11 Q. Okay. Got it. And just to cut to the chase the  
12 remaining one cited in the section in the bullet points on  
13 15, for example, are also your analysis of broader themes  
14 in the macro environment?

15 A. No. I mean, these are all indications. So these  
16 are indicating this macro environment, but they're also  
17 indicating that Hispanics including Hispanics citizens have  
18 these confidentiality -- are more likely to consider the  
19 citizenship question to be sensitive. And that's evident  
20 both in this public opinion data, but also in these  
21 estimates of civic behavior such as use of food stamps and  
22 healthcare and so on. Where economic analyses have found  
23 that the impact applies not only to those who would  
24 directly be deported, but also even to Hispanic citizens.

25 Q. And when you say the impact, you're talking about

1 the impact of confidentiality concerns, right?

2 A. Yes. The operationalization in these particular  
3 cases are -- there's different treatments that have been  
4 evaluated, but they are all kind of tapping into  
5 confidentiality concerns.

6 Q. Okay. Did any of them relate specifically to the  
7 context of the decennial census?

8 A. No.

9 Q. Did any of them relation specifically to a  
10 citizenship question?

11 MR. FREEDMAN: Object to form.

12 THE DEPONENT: No. Well, I mean, I -- people  
13 have made the argument that the first case actually is  
14 pretty explicitly parallel about citizenship question  
15 because it's the case in Alabama where the requirement was  
16 for citizenship status to be reported. And upon that  
17 policy decision there was this impact of Hispanic students  
18 not showing up for class. And so some have made the  
19 parallels that that is in fact about a citizenship  
20 question, but clearly not within the context of the Census  
21 Bureau.

22 BY MR. EHRLICH:

23 Q. Got it. Were they -- did the Alabama Department  
24 of Education estimate whether it was Hispanic citizens that  
25 did not show up for class?

1           A.     That was not specified.

2           Q.     Okay. Can we turn to page 17? So this is your  
3 explanation of why the Census Bureau's differential  
4 self-response rate analysis is conservative, right?

5           A.     Correct.

6           Q.     And these were the analyses we looked at before,  
7 which were Exhibit 3, the January 19th memo, and Exhibit 4,  
8 the Brown technical paper?

9           A.     Correct.

10          Q.     Okay. The second paragraph starts, first the  
11 analysis was based on a dataset that individually linked  
12 ACS responses with administrative records, but each of  
13 these files are more likely to be missing non-citizens and  
14 Hispanic households exacerbating potential coverage bias in  
15 the resulting estimates. Can you explain what coverage  
16 bias is?

17          A.     Sure. So we know that administrative records  
18 don't cover 100 percent of the population. As the Brown  
19 white paper acknowledges, non-citizens are more likely to  
20 be missing from that sample of administrative records. We  
21 also know that the ACS also doesn't cover 100 percent of  
22 the population or it does with weighting, but those  
23 weighting -- those particular weights make some assumptions  
24 that again you have non-citizens who are more likely to be  
25 excluded. So when you put those two things together, and

1 you only find that pool of people who are in each of those  
2 two samples, you are missing non-citizens at a higher rate,  
3 and within certain methodology we reference kind of the  
4 extent to which that's adequately covering the population  
5 of interest. That's coverage error. And all of what the  
6 Bureau had put out suggests that there is coverage bias.  
7 That is, is that we're disproportionately missing non-  
8 citizens in that resulting match sample.

9 Q. The match sample you're referring to was that  
10 administrative record matching?

11 A. It's the analysis that the Brown et al., white  
12 paper was based on.

13 Q. So but didn't the Brown analysis compare all  
14 citizen households based on administrative data versus all  
15 other households such that if there was no administrative  
16 record linkage that would be included in the second group?

17 A. Maybe that's possible in some of the analyses,  
18 but that's not my understanding of all of the analyses.  
19 That my understanding of the analyses is that they used it  
20 for some of their -- for the bulk of their analyses that  
21 they were relying on that match. But perhaps there's  
22 something I missed. Like I said, I got that white paper in  
23 detail quite late in my report writing.

24 Q. And so if that was the way they did do it in  
25 terms of putting one group of only citizens that was both

1 by ACS data and administrative data, and the second group  
2 all other citizens, would that change your opinion about  
3 the coverage bias?

4 MR. FREEDMAN: Object to form.

5 THE DEPONENT: No. Because still what you're  
6 dealing with is you're defining on the basis of a set of  
7 data that are incomplete.

8 BY MR. EHRLICH:

9 Q. And the set of data that are incomplete, are they  
10 ACS responses?

11 A. No, both. Each of them are incomplete.

12 Q. So if a household doesn't have administrative  
13 record data, they would be put in the second group though,  
14 right?

15 MR. FREEDMAN: Object to form.

16 THE DEPONENT: So the only way that you -- I  
17 mean, the way that they have defined citizen and non-  
18 citizen households, my understanding was it was the  
19 combination of the administrative records where the  
20 administrative records were as they acknowledged more  
21 likely to miss non-citizens. And they are looking at  
22 estimates. They're looking at ACS again as they  
23 acknowledge the ACS is also missing -- more likely to miss  
24 non-citizens.

25 BY MR. EHRLICH:

1           Q.   And so if your understanding of their grouping  
2   was incorrect would that change your opinion of the  
3   coverage bias then?

4           MR. FREEDMAN:   Object to form.

5           THE DEPONENT:   I guess I would need to have more  
6   clarity on where I've misinterpreted something.

7           BY MR. EHRLICH:

8           Q.   Okay.   Why don't we just turn to Exhibit 4 for a  
9   second.   I think page 33.   Can you just look at pages 33 to  
10   34 for a second?   And I'll do the same.

11           (Pause.)

12          Q.   I'm sorry.   The second part of 34 is, I think,  
13   the relevant part.

14           (Pause.)

15          Q.   Does this describe the process they used?

16          MR. FREEDMAN:   Object to form.

17          THE DEPONENT:   I mean, I'm happy to have you  
18   point out where I may have misinterpreted their method in  
19   some way.   And that is entirely possible.   But, I guess, I  
20   don't see what would point me to that.

21          BY MR. EHRLICH:

22          Q.   So looking at Table 7, for example, the top is an  
23   analysis, and it compares AR, all citizen household  
24   response rates versus households with at least one AR  
25   non-citizen, right?

1 MR. FREEDMAN: Object to form and foundation.

2 THE DEPONENT: So if your interpretation is that  
3 the match dataset is used for one of -- the AR and ACS that  
4 the all other households is on the basis of just the ACS  
5 and just the census, that doesn't fully address the  
6 concern --

7 BY MR. EHRLICH:

8 Q. Got it.

9 A. -- about coverage bias.

10 Q. Okay. Can you explain that?

11 A. And that's because the ACS is also missing  
12 non-citizens at a higher rate as Brown, et al., acknowledge  
13 in their discussion of the weights.

14 Q. Okay. Got it. Page 17, looking at Footnote  
15 72 --

16 MR. FREEDMAN: Same objection.

17 THE DEPONENT: Just so the record's clear, going  
18 back to the report?

19 MR. EHRLICH: Oh, I apologize. Yes.

20 BY MR. EHRLICH:

21 Q. Exhibit 5, your expert report. Says other  
22 modeling decisions are also likely to bias the downward  
23 estimate. And then you list a few things. The first one  
24 is the assumption that foreign born individuals with  
25 missing citizenship data in administrative records are all

1 U.S. citizens.

2 A. That's in some of the analyses, not all of them.

3 Q. Got it. Is it fair to say if you look at Exhibit  
4 4, that that's in, you know, page 36 for example that would  
5 be the case in the top panel but not the bottom panel?

6 A. I think that's correct.

7 Q. Okay. Fair enough.

8 A. I believe that's a distinction between the 5.8  
9 and the 5.1, if I'm not mistaken.

10 Q. Okay. And it says, sorry. Going back to Exhibit  
11 5, in Footnote 72. The inclusion of the English language  
12 ability in the Blinder-Oaxaca decomposition. Can you  
13 explain why that bias is downward --

14 A. Yeah. So what the attempt here to do is to try,  
15 and with observational data make for a clean estimate of  
16 the causal effect of the citizenship question. Any time  
17 you're trying to estimate a causal effect, you want to not  
18 account for post-treatment variables. And you have -- in  
19 observational data, it's very difficult to know what are  
20 potential confounders and how variables that you include in  
21 the model might impact the estimated results. I would say  
22 that I was surprised by the inclusion of the English  
23 language ability. In some ways when we're thinking about  
24 the non-citizen versus the citizen comparison, you know, we  
25 don't necessarily, you know, we think that a mechanism

1   there by which the addition of the citizenship question is  
2   going to have an effect I expect is the confidentiality  
3   concerns. And so it seemed like the inclusion of the  
4   English language ability might be over correcting for the  
5   estimate. Now it's entirely possible that these are the  
6   best variables to include in the model. My biggest  
7   complaint was that there was no explanation of why we saw  
8   the model justification, you know, why there was no  
9   justification of the particular model specification that we  
10   saw. I think others might pick apart the particular  
11   modeling assumption, and say that we should have then  
12   said -- used some type of non-parametric matching to do the  
13   estimation instead. All I wanted, the point I was trying  
14   to make was that there are a variety of different  
15   assumptions that were built into these estimates, and I was  
16   pointing out some of the assumptions that might have led to  
17   a smaller estimate than we might otherwise have gotten.

18       Q.   Okay. I think I understand that. The point of  
19   the Blinder Oaxaca decomposition that we discussed is to  
20   try and rule out factors that could be contributing to the  
21   thing that you're trying to study. Is that right?

22       A.   Um-hmm.

23       Q.   And so your position is that excluding that from  
24   the factors that you're trying to control for would give  
25   you a better estimate of the effect of the citizenship

1 question?

2 A. My fundamental position is that we need to have a  
3 theoretical reason that some variables are accounted for in  
4 the model. I haven't been presented with that  
5 justification for why some things were accounted for and  
6 some things weren't. And so my basic point is just to say  
7 that you're going to get different results depending on  
8 what is included in your model. And this is entirely, you  
9 know, potentially a entirely reasonable model  
10 specification. And the reality is, is that different  
11 researchers will, you know, have different views about what  
12 is the correct model specification. I would have just  
13 liked to have seen the model without this particular  
14 variable accountable.

15 Q. Got it. So I'm just trying to gauge what effect  
16 excluding the English language ability from the Blinder-  
17 Oaxaca decomposition would have.

18 A. I want to be careful not to answer that in a way  
19 that steps beyond what I'm able to say because I don't have  
20 access to the data.

21 Q. Yeah.

22 A. All I have access to is their results. And so  
23 that's where, you know, I want to just be clear about what  
24 I can and can't say.

25 Q. Yeah. Okay.

1           A.    And, you know, one possibility is that this  
2   particular variable in particular would have an impact.  
3   Might not. I don't -- without being able to run the data  
4   myself, I can't say.

5           Q.    Sorry. When you say this particular impact  
6   you're talking about English language ability on -- may  
7   have an impact on --

8           A.    The estimates that we get as to the causal  
9   effect. And I say that with some quotes around causal  
10  effect.

11          Q.    Yeah.

12          A.    Because it is still observational data that is  
13  not in our CT. And as Brown, the researcher said, like,  
14  this is imperfect. It is entirely imperfect. We would  
15  prefer to have an RCT. Modeling decisions had to be made.  
16  Those modeling decisions have consequences for the  
17  estimates that we get as a result.

18          Q.    Got it. So if you -- strike that. So is it your  
19  opinion that households containing only citizens that speak  
20  a foreign language at home would be negatively affected by  
21  the citizenship question?

22               MR. FREEDMAN: Object to form.

23               THE DEPONENT: No. My expectation is that  
24  households who view the citizenship question sensitive and  
25  are concerned about confidentiality associated with that

1 citizenship question will be less likely to respond. We  
2 don't directly have a measure of that in the population.  
3 And so what we do is we look for potential proxies in  
4 subgroups that we think might disproportionately be --  
5 consider the citizenship question to be sensitive.  
6 Non-citizens would be one subgroup. Hispanics would be  
7 another subgroup. But we would also expect heterogeneity  
8 within those groups as well. And that's what my concern  
9 about this particular control is, is that it might be  
10 downward biasing because if you're wanting to recognize  
11 that there's going to be variation across the non-citizen  
12 population in terms of the likely effect.

13 Q. Okay. I don't want to belabor this point, but I  
14 do want to understand the point. So the Blinder-Oaxaca  
15 decomposition, the factors that you're analyzing there are  
16 the ones that you're ruling out, correct?

17 A. So, I guess, the thing that I would say again is  
18 that there's a particular model that was estimated that  
19 ended up with the results. That model isn't the perfect  
20 model, and we don't know how the results would exactly  
21 change with a different model, and I would have liked to  
22 have seen the results without English language ability in  
23 there.

24 Q. Okay. Later on in the footnote it goes on to  
25 page 18.

1 MR. FREEDMAN: Same objection.

2 THE DEPONENT: Again you're back to Exhibit 5?

3 MR. EHRLICH: Yeah, sorry, Exhibit 5, Footnote  
4 72.

5 BY MR. EHRLICH:

6 Q. Going over on to page 18. So the failure to  
7 account for attrition bias in the SIPP analysis, can you  
8 explain what that means?

9 A. Yeah. There was some analysis presented at some  
10 time, and I don't even remember exactly what it is at this  
11 point, where SIPP was used. SIPP is another census survey  
12 that includes citizenship. And there as, if I'm recalling  
13 correctly, an analysis that looked at multiple waves. And  
14 SIPP has attrition. That attrition is not random. And so,  
15 you know, you have to account for that in your modeling.

16 Q. Okay. And then the last part of that footnote  
17 says another thing that downward biased the estimate was  
18 the use of all citizen households rather than white citizen  
19 households. Can you explain that?

20 A. Sure. So, you know, I think a case could be made  
21 that because when -- if we're particularly interested in at  
22 the end of the day the differential undercount, that is the  
23 undercount of Hispanics relative to whites, that it would  
24 have been a relevant benchmark to compare to white  
25 households, not to just citizen households or not just to

1 all households in some of the analysis. So it -- there's  
2 always the question of what's the counterfactual. And, you  
3 know, that's what ultimately the question is.

4 Q. Yeah. Understood. I guess I'm a little bit  
5 confused because the analysis was attempting to using a  
6 natural experiment rather than RCT to determine what the  
7 decline in self-response would be due to the citizenship  
8 question, correct?

9 A. Yes.

10 Q. And so using whites as one group rather than all  
11 citizens would add non-citizen whites to the control group,  
12 right?

13 A. No. So what the issue is, is if we think that  
14 the impact of the citizenship question could affect  
15 citizens, say Hispanics citizens, then what you actually do  
16 is you have some treated people in your control group at  
17 that point. So, you know, one possibility to say is that  
18 the counterfactual of interest is actually a group that we  
19 think absolutely is not going to be impacted by the  
20 addition of a citizenship question, and that would be white  
21 citizen households. So, you know, we might think that  
22 non-citizen Asians could be impacted. We might think --  
23 right -- there are other subgroups where we -- given that  
24 kind of the causal mechanism that is suggested by the  
25 survey methodology research is this sensitivity of the

1 survey -- citizenship question. Then remember that all of  
2 the analyses that we're doing are imperfectly, you know,  
3 looking at the impact of increased sensitivity of the  
4 citizenship question. And so that counterfactual includes  
5 some individuals who are presumably treated. I think a  
6 case can be made either way, but the point is, is that  
7 because it's also the case that there's probably some  
8 non-citizens who will not be impacted. Right? I have a  
9 lot of colleagues who are non-citizens that they probably  
10 are not terribly fearful about the addition of a  
11 citizenship question. But the point is just that the  
12 choice of the counterfactual is meaningful here, and an  
13 argument can be made for a different counterfactual.

14 Q. But the counterfactual of all citizens isn't  
15 necessarily unreasonable?

16 A. No. I'm saying that an argument can be made for  
17 a different counterfactual that would have probably  
18 resulted in a larger estimate. So it's a reasonable --  
19 it's fine, it's fine. But I think a case could be made for  
20 that it's a conservative estimate because there are people  
21 within that control group, right, that are -- that have  
22 been treated, if that makes sense.

23 Q. Such as non-white citizens?

24 A. Correct.

25 Q. Okay. Turning to the next page 18, last

1 paragraph. You're talking about the change in survey  
2 climate in terms of -- sorry, strike that. You're talking  
3 about the -- in the last paragraph on 18, you're talking  
4 about a change in survey climate, right?

5 A. Um-hmm.

6 Q. Can you describe that?

7 A. Sure. As I talk about in the beginning of the  
8 report that the kind of scientific framework of survey  
9 participation takes into account the individual  
10 characteristics of the respondent, the characteristics of  
11 the survey, and the broader environment. And those three  
12 things kind of interact together. And the broader  
13 environment matters here because it's likely to make  
14 salient the concerns about the citizenship question and,  
15 yeah.

16 Q. Okay. So turning to the next page on 19. Just  
17 going to your concluding paragraph at the bottom. You say  
18 there is ample empirical support as well as well-grounded  
19 science of survey methodology, which all consistently  
20 points to the same conclusion. The addition of a  
21 citizenship question is highly likely to reduce rates and  
22 data quality among non-citizens and Hispanic households.  
23 Right?

24 A. Yes.

25 Q. What's the empirical support you're specifically

1     referencing with that sentence?

2           A.     There's several different pieces. There is both  
3     the internal Census Bureau analyses, the Brown memo.  
4     There's the break-off data. There's the item non-response  
5     data. There's the aggregate relationship that's reference  
6     in this report. There's empirical data that is from  
7     previous censuses that's been published in survey  
8     methodology literature. There's empirical data that has  
9     been published in other white papers within the Census  
10    Bureau. And then there is all of the citations that I  
11    gave. Just generally a -- survey methodology that  
12    sometimes is not specific to the census.

13          Q.     Okay. So here you're talking about empirical  
14    support for what exact proposition?

15          A.     For that entire conclusion.

16          Q.     Okay. But the empirical support you're  
17    referencing was possibly outside the context of the census  
18    and outside the context of a citizenship question?

19               MR. FREEDMAN: Object.

20               THE DEPONENT: Some yes, some no.

21               BY MR. EHRLICH:

22          Q.     Okay. And the next part of the sentence, well  
23    grounded signs of survey methodology. What did you mean by  
24    that?

25          A.     Meaning that there is large scientific

1 literature, for instance, about the impact of response  
2 burden on data quality and non-response. And that we can  
3 make predictions on the basis of that research about the  
4 likely impact in the context of the census, combined with  
5 the explicit census analyses that that offers a pretty  
6 compelling body of evidence about the impact on  
7 self-response --

8 Q. Got it.

9 A. -- data quality.

10 Q. And so going on to page 20, the end of the  
11 sentence, you say that addition of a citizenship question  
12 is highly likely to reduce response rates and data quality  
13 among non-citizens and Hispanic households. What do you  
14 mean by highly likely there?

15 A. Meaning that every piece of evidence,  
16 qualitative, quantitative, about the census, about other  
17 surveys, all points in the same direction of expecting  
18 there to be a lower response rate.

19 Q. Is there a quantifiable way to say that?

20 A. I agree with you that I would love to have a  
21 precise point estimate, and think that the Census Bureau  
22 should have done more to get a precise point estimate. But  
23 that doesn't eliminate the fact that there is a large body  
24 of other evidence from the census, from external to the  
25 census that point all to the same direction of a negative

1 impact.

2 Q. And that's due to a lot of the studies we  
3 discussed in terms of confidentiality concerns and things  
4 like that?

5 A. Yes.

6 Q. And when you say highly likely, you mean even  
7 more than just likely? You're expressing some certainty  
8 there, is that right?

9 A. Yes. It means that in my professional opinion  
10 that I am confident that the evidence points towards a  
11 negative impact on response rates and data quality.

12 Q. Okay.

13 A. As Census Bureau research also suggests.

14 Q. Okay. So turning to 21 we're in the section  
15 discussing pre-testing of the census question here, right?

16 A. Um-hmm.

17 Q. And in the first full paragraph, second sentence,  
18 you say research has shown for instance that respondents  
19 are more likely to give socially desirable answers in  
20 interviewer-administered surveys compared to  
21 self-administered questionnaires. What do you mean by  
22 socially desirable answers?

23 A. Sure. In the context specific to what we're  
24 talking about, socially desirable means wanting to give a  
25 response that the society, right, thinks is the right

1 response. And so here the people might say that they're  
2 citizens. So imagine a neighbor who is having to report on  
3 the citizenship status of, you know, the apartment next to  
4 them, that the social desirable response there might be to  
5 say they're citizens even if they might not know. In  
6 survey methodology literature, socially desirable is just a  
7 category of sensitive questions where we recognize that it  
8 is difficult to get people to respond to a sensitive  
9 question.

10 Q. Got it. And in that situation that you were just  
11 discussing where family next door would want to say that  
12 their neighbors are all citizens, that would result in  
13 inaccurate citizenship data for that enumerated next door  
14 neighbor, right?

15 A. Correct.

16 Q. Okay.

17 A. Yeah. And so sensitive question -- as I talk  
18 about before, sensitive questions can lead to, you know,  
19 problems with unit non-response, item non-response and  
20 inaccuracy. And, you know, when we're talking about social  
21 desirability, that's all wrapped up in these kind of  
22 sensitive questions. And so people might give an  
23 inaccurate response because of the socially desirable  
24 response.

25 Q. And before, I think you said sensitive questions

1 are one aspect of burden, right?

2 A. Right.

3 Q. Along with various other aspects. Is the macro  
4 climate part of the burden? Is that associated with that  
5 too?

6 A. I would consider that a separate.

7 Q. Separate.

8 A. So perceived burden of a survey is, you know,  
9 related to the design of the survey. It's also because  
10 there's going to be some groups who consider citizenship to  
11 be sensitive and some that aren't. It's also related to  
12 the characteristics of the individual. The external  
13 environment can prime or make salient some aspects of like  
14 the confidentiality concerns. In 2000, it was privacy  
15 concerns that were made salient.

16 Q. Okay. Page 22, near the bottom of the page going  
17 into 23. You're talking about the 2018 -- a 2018 press  
18 release. Talking about the end-to-end census test.

19 A. Um-hmm.

20 Q. And you say the -- well, the press release says  
21 the 2018 census test will help the Census Bureau validate  
22 its readiness for the 2020 census operations, procedures,  
23 systems and field infrastructure for a once in a decade  
24 census. Right?

25 A. Um-hmm.

1 Q. That description of the end-to-end test doesn't  
2 talk about testing new content, right?

3 A. It does not.

4 Q. Was the -- was one of the purposes of the 2010  
5 end-to-end test to test new content?

6 MR. FREEDMAN: Object to form and foundation.

7 THE DEPONENT: The citizenship question was not  
8 on the end-to-end test.

9 BY MR. EHRLICH:

10 Q. Right. But what is the purpose of the end-to-end  
11 test?

12 A. It is --

13 MR. FREEDMAN: Same objection.

14 THE DEPONENT: It's a field test. It's supposed  
15 to be everything. It's supposed to be exactly what's going  
16 to happen, right, when it comes to the decennial census.  
17 That was not what happened in 2018, right? Because this  
18 citizenship question was added so late the end-to-end test  
19 cannot be considered helpful field test. They also didn't  
20 do the communications campaign associated with 2018. they  
21 also didn't do the testing in West Virginia where the, you  
22 know, there was the worst self-coverage. Anyway, but the  
23 point is that the end-to-end test is intended to be the dry  
24 run for the real thing.

25 BY MR. EHRLICH:

1 Q. Did the end-to-end test, test the operations of  
2 the census?

3 MR. FREEDMAN: Object to form and foundation.

4 THE DEPONENT: I would conclude that it was  
5 incomplete. It was incomplete in part because the limited  
6 geographic nature, cutting the West Virginia side. But  
7 also incomplete because the content is different. And you  
8 would very much learn about how operations -- some of the  
9 operations, right, might be related to the inclusion of a  
10 citizenship question. Now, I think generally, you know,  
11 the -- our systems in place and procedures and, you know,  
12 those, did the phones work as intended and things like  
13 that, that those things all happened.

14 BY MR. EHRLICH:

15 Q. So from an operational perspective you would say  
16 that 2018 end-to-end test was a success?

17 MR. FREEDMAN: Object to form.

18 THE DEPONENT: I'm not able to -- I mean I have,  
19 I have not seen any reports about calling it a success or  
20 not beyond Dr. Abowd's characterization.

21 BY MR. EHRLICH:

22 Q. Got it. If a citizenship question were on the  
23 2018 end-to-end test what extra data would that have given  
24 you?

25 MR. FREEDMAN: Object to form.

1           THE DEPONENT: So actually there's several things  
2   that I think would be valuable to know. You would have  
3   seen for that particular test what it looked like in terms  
4   of the increased NRFU workload. You would be able to see  
5   how enumerators were able to handle NRFU in light of having  
6   the citizenship question. Had there been a full-on  
7   engagement with trusted voices for instance, there could  
8   have been some on the ground understanding of how people  
9   were reacting to the citizenship question. That certainly  
10  would have informed 2020. So --

11           BY MR. EHRLICH:

12           Q. Would it -- if you're looking for the effect of a  
13  citizenship question would an RCT be better than that or  
14  not as good as that?

15           A. That's a little bit of interesting question. I  
16  would want to see an RCT. On the other hand, I would want  
17  an RCT and a field test would be ideal. I mean, you know,  
18  the standard census process is that the end-to-end test is,  
19  you know, a dry run of everything. And so the ideal would  
20  be to do the RCT type of testing in the run-up so that your  
21  end-to-end test is in fact end-to-end.

22           Q. Given the timing of adding the citizenship  
23  question, is it your opinion that it was reasonable to  
24  undertake that process that you're talking about before the  
25  end-to-end test?

1 MR. FREEDMAN: Object to form.

2 THE DEPONENT: I think the decision to add the  
3 citizenship question at such a late date precluded probably  
4 doing the testing within the end-to-end. However, it did  
5 not precluded doing adequate pre-testing.

6 BY MR. EHRLICH:

7 Q. And that pre-testing you're talking about is what  
8 exactly?

9 A. Like an RCT.

10 Q. Okay. And that could still occur, right?

11 A. That is a question for the Census Bureau.

12 Q. Well, let me ask this. If that did occur, would  
13 that assuage your concerns?

14 MR. FREEDMAN: Object to form.

15 THE DEPONENT: I do think that -- I'm not  
16 fundamentally opposed to asking sensitive questions on  
17 census surveys. So to be clear, the concern here is about  
18 the process, number one, the lack of pre-testing, and what  
19 the likely impact is going to be. I think had the Census  
20 Bureau done a thorough job of evaluating the impact of  
21 adding the citizenship question on the objectivity,  
22 integrity and utility of the census that a reasonable  
23 decision could be made to ultimately include it. But it's  
24 my opinion that they have not adequately evaluated the  
25 impact of adding the citizenship question on those

1 dimensions of data quality.

2 MR. FREEDMAN: Counsel, we've been going about an  
3 hour and 15 minutes. Whenever you get to a convenient  
4 point, take a break.

5 MR. EHRLICH: Okay.

6 BY MR. EHRLICH:

7 Q. And so if we -- if the Census Bureau had or does  
8 conduct an RCT, and has a better handle on the effect of a  
9 citizenship question, it's your opinion that the addition  
10 of a citizenship question could be better handled in the  
11 census and, therefore, less of an issue for the concerns  
12 you raise in your report? Is that right?

13 MR. FREEDMAN: Object to form.

14 THE DEPONENT: So if I, if I'm interpreting your  
15 question correctly, I do think that there is a process that  
16 could be followed that would allow the decision makers to  
17 be able to determine if the citizenship question could be  
18 added without impacting the objectivity, utility and  
19 integrity of the data, and if it was determined that it  
20 could be added without having significant impacts on those  
21 -- data quality, then that would be a reasonable decision.

22 BY MR. EHRLICH:

23 Q. Could that testing still be done today?

24 MR. FREEDMAN: Object to form.

25 THE DEPONENT: I think that's a question for the

1 Census Bureau.

2 BY MR. EHRLICH:

3 Q. Let me ask the question this way. Given infinite  
4 time from this point forward, is there testing that could  
5 be done that would assuage your concerns about a  
6 citizenship question on the 2020 census?

7 MR. FREEDMAN: Object to form.

8 THE DEPONENT: But there's not infinite time  
9 before 2020 is the problem.

10 BY MR. EHRLICH:

11 Q. Fair enough. Fair enough.

12 A. So if I'm interpreting you correctly, would it be  
13 possible to separate from 2020 but to add a citizenship  
14 question to a census, and to do so in a way that I wouldn't  
15 have concerns, the answer is yes. If all of the  
16 conditions, you know, all of the processes were in place  
17 that allowed us to evaluate impacts on data quality. Now,  
18 when I look at the reality of the timeframe between now and  
19 2020, I look at the reality of the macro environment. I  
20 think that there is nothing that suggest to me that it  
21 would be possible to add a citizenship question on 2020 and  
22 not have a negative impact of self-response of non-citizens  
23 and Hispanics absent some type of really massive policy  
24 change in this country.

25 Q. Okay. So even if we did an RCT tomorrow, do you

1 think -- and understood the results, and understood the  
2 effects of a citizenship question there's no way that the  
3 citizenship question could be added to the 2020 census  
4 without -- let me start again. If we did an RCT tomorrow,  
5 and understood the full results and impacts of a  
6 citizenship question, is it your view that even  
7 understanding those results we could not put a citizenship  
8 question on the 2020 census?

9 MR. FREEDMAN: Object to form.

10 THE DEPONENT: Is your hypothetical that with  
11 this RCT we find that there's no effect or a positive  
12 effect on response rate?

13 BY MR. EHRLICH:

14 Q. So you would want to know the results of the RCT  
15 is what you're saying?

16 A. Yeah. I mean, so in your -- so I think with the  
17 hypothetical the reason to do the RCT is to understand the  
18 impact of adding a citizenship question on data quality.  
19 And so the outcome of that RCT matters in terms of decision  
20 making. I mean, if the outcome didn't matter, then I would  
21 be concerned about evidence based policy making.

22 Q. Yeah. And when you say -- when you're talking  
23 about data quality, what exactly do you mean?

24 A. The objectivity, integrity and utility of the  
25 data.

1 Q. Okay. The data being the responses you get  
2 from -- the information you get from the 2020 census?

3 A. The census --

4 MR. FREEDMAN: Object to form.

5 THE DEPONENT: I'm sorry.

6 MR. FREEDMAN: Go ahead.

7 THE DEPONENT: The census count. By objectivity,  
8 I mean the accuracy and -- again going back to as we talked  
9 about earlier in the day that it's both about getting an  
10 overall accurate count, but also getting accurate counts of  
11 subgroups so that there's not differential inaccuracies  
12 that have implications for resources and representation.  
13 Integrity refers to the, you know, the confidentiality of  
14 the data. And the utility means the usefulness. And in  
15 this case, that's, you know, evaluated with respect to what  
16 has been requested of the Census Bureau. But as I made the  
17 case in my report, is also in question. Would this be a  
18 good time for a bathroom break?

19 MR. EHRLICH: Yeah. Let's take a break.

20 (Off the record at 2:36 p.m.)

21 (On the record at 2:50 p.m.)

22 BY MR. EHRLICH:

23 Q. We were just talking about testing of the  
24 citizenship question. We're on page 23 of your report,  
25 which is Exhibit 5. And we're talking about -- just to

1 close the loop on this. We were talking about the  
2 advantage of an RCT. And you were saying that even with an  
3 RCT you felt that it would not be advisable to add the  
4 citizenship question in 2020, is that right?

5 A. No. I said I would want to see the results of  
6 the RCT before making a judgment about --

7 Q. Got it. Given the macro environment, do you  
8 think it's possible that the RCT would show that there  
9 would be no effect of a citizenship question on 2020?

10 A. That is hard to imagine.

11 Q. Okay. Do you think the macro environment is  
12 going to cause difficulties for 2020 in non-citizens for  
13 example even absent a citizenship question?

14 MR. FREEDMAN: Object to form.

15 THE DEPONENT: Yes. And I think the addition of  
16 a citizenship question exacerbates that.

17 BY MR. EHRLICH:

18 Q. Okay. Due to the burden and confidentiality  
19 concerns that we talked about earlier?

20 A. Yes.

21 Q. Okay. On page 23 you say there -- the middle of  
22 the page, you say there are two well-known examples of  
23 recent content evaluations, which highlight the role of  
24 testing. One is the evaluation of a combined race and  
25 ethnicity question, which was not adopted, and revisions to

1 the decennial relationship question to capture same sex  
2 relationships, which was adopted. Right?

3 A. Yes.

4 Q. And both underwent multi-year testing evaluation  
5 in cooperation with experts and stakeholders. Is that  
6 right?

7 A. Yes.

8 Q. Both of those had to do with changing the format  
9 and wording of two particular questions, right?

10 A. Yes.

11 Q. At the bottom of the page, it says even before  
12 addition of a citizenship question the Government  
13 Accountability Office -- if I say GAO you would know what  
14 that means?

15 A. Um-hmm.

16 Q. Had designated the 2020 census as high risk, and  
17 had emphasized the importance of testing evaluation to  
18 mitigate risk to census accuracy and cost. Do you know why  
19 the GAO classified the 2020 census as high risk?

20 A. They had a full report that I believe they cite  
21 here. They gave a -- my recollection is, is that they gave  
22 a number of different issues. Some have been tests that  
23 were not conducted, budgetary constraints, you know,  
24 decisions still to be made. At the end of the day, if I'm  
25 correctly summarizing that document, there are a lot of

1 changes for 2020, and making those changes requires a lot  
2 of testing, and creates a lot of uncertainty. And my  
3 understanding is that the -- that GAO report was pointing  
4 to risks associated with a number of those changes.

5 Q. Would you say information technology shortcomings  
6 is one concern?

7 A. Yeah. I mean, so of those -- of the major  
8 changes that were meant to try and keep accuracy the same  
9 while holding cost steady, the Internet self-completion of  
10 course is one of them. The use of administrative records  
11 is another. And both of those are ones that there have  
12 been bumps along the way and fits and starts and  
13 uncertainties about where things will end up.

14 Q. Is it fair to say that these are fairly common  
15 challenges for a decennial census?

16 MR. FREEDMAN: Object to form.

17 THE DEPONENT: I don't know how to answer that  
18 question. This is the first time that the Census Bureau  
19 will be conducting online. The first time to use  
20 administrative records in such an extensive fashion. And  
21 so I would not consider those kind of commonplace in that  
22 respect.

23 BY MR. EHRLICH:

24 Q. Fair enough. More broadly speaking, do you think  
25 technology issues, cost issues, elimination of tests, do

1 you think those are common things for the decennial census  
2 to face?

3 MR. FREEDMAN: Object to form.

4 THE DEPONENT: I probably shouldn't speak to  
5 common versus not common.

6 BY MR. EHRLICH:

7 Q. Okay.

8 A. In terms of those issues.

9 Q. Okay.

10 MR. FREEDMAN: What exhibit?

11 MR. EHRLICH: Six.

12 MR. FREEDMAN: Okay.

13 (DOJ Exhibit 6 marked for identification.)

14 BY MR. EHRLICH:

15 Q. So I've handed you what's been marked as  
16 Exhibit 6. This is a press release titled the GAO Adds the  
17 2010 Census to the High Risk List. Have you seen this  
18 before?

19 A. Um.

20 Q. The third paragraph down starting with GAO added,  
21 can you read that?

22 MR. FREEDMAN: Object to form and foundation. Go  
23 ahead.

24 THE DEPONENT: GAO added the upcoming census to  
25 the high risk list due to a combination of longstanding

1 deficiencies and emerging challenges including shortcomings  
2 in the Census Bureau's management of information  
3 technology, weak performances by technology that the Bureau  
4 plans to use for data collection, uncertainty of cost  
5 estimates, and the elimination of several dress rehearsal  
6 activities.

7 BY MR. EHRLICH:

8 Q. So looking at this, is it fair to say that the  
9 2010 census was also classified as high risk?

10 MR. FREEDMAN: Object to form and foundation.

11 THE DEPONENT: Yes, it was also -- high risk.

12 And my recollection is, is, right, there was the last-  
13 minute device disaster with 2010. So, yeah, they also had  
14 issues.

15 BY MR. EHRLICH:

16 Q. They also had issues. Handed you Exhibit 7.  
17 (DOJ Exhibit 7 marked for identification.)

18 MR. FREEDMAN: Do you have copies for --

19 MR. EHRLICH: Oh, sorry about that. Yeah.

20 BY MR. EHRLICH:

21 Q. This is -- I've handed you what's been marked  
22 Exhibit 7, GAO High Risk Series an Update is the title,  
23 dated January 1999. Publicly available. Have you seen  
24 this document before?

25 A. I have not, no.

1           Q.    Can you turn to page 143? Paragraph at the  
2   bottom, very bottom of the page on 143. The last sentence  
3   says as we reported in our earlier work -- excuse me. Let  
4   me back up. It says in that regard our work has shown that  
5   the Bureau faces a number of formidable challenges to cost  
6   effective, accurate and complete census no matter which  
7   design is chosen. As we reported in our earlier work, they  
8   include the following: Mail response rates remain  
9   problematic. Scanning equipment used to electronically  
10  record responses from census questionnaires experience  
11  system crashes due to software flaws, and local  
12  partnerships, et cetera, et cetera, et cetera. Further  
13  down the page it says, these major challenges and  
14  uncertainties have led us to conclude that there is a high  
15  risk that the 20 -- 2000 census will be less accurately and  
16  more costly than previous censuses. Did I read that right?

17               MR. FREEDMAN: Object to form and foundation.

18               THE DEPONENT: Yes.

19               BY MR. EHRLICH:

20           Q.    So the 2000 census was also classified as high  
21  risk, is that right?

22               MR. FREEDMAN: Object to foundation.

23               THE DEPONENT: Yes.

24               BY MR. EHRLICH:

25           Q.    And both the 2000 and 2010 censuses, the GAO

1 raised similar concerns to 2020 regarding technology and  
2 cost shortcomings and things like that?

3 MR. FREEDMAN: Object to form.

4 THE DEPONENT: I mean, I don't want to say that  
5 they're exactly similar. Did they raise issues about the  
6 fragile nature of the census in these censuses?

7 Absolutely. And it's one of the reasons that we -- I think  
8 the Census Bureau as such important standards and  
9 guidelines about making changes to the census, and the  
10 process by which that testing happens.

11 BY MR. EHRLICH:

12 Q. But the concerns that the GAO raised for 2020  
13 broadly speaking are not uncommon as it relates to  
14 decennial censuses?

15 MR. FREEDMAN: Object to form.

16 THE DEPONENT: Correct. And those concerns  
17 raised were ones raised prior to the addition of the  
18 citizenship question.

19 BY MR. EHRLICH:

20 Q. Right. So going back to Exhibit 5, which is your  
21 report, if we go to page 27, the top of 27, the first full  
22 sentence says pre-testing should have been used to  
23 determine if the placement and prominence of a citizenship  
24 question on the decennial census questionnaire influences  
25 the way in which the respondent interprets and evaluates

1 the survey, right? What did you mean by that?

2 A. So survey methodologists, internal and external  
3 to the Census Bureau recognize that what matters is not  
4 just the wording of a question, but also where it is within  
5 the survey. So the question order. And then the context  
6 as well. And all of those things are different with a  
7 citizenship question on the short form compared to a  
8 citizenship question on the ACS. And so the question is,  
9 is how does that impact how people interpret the survey?  
10 Do they, for instance, think that the rationale for adding  
11 the citizenship question is different in the census  
12 compared to the ACS? If so, then their likelihood of  
13 responding or breaking off or lying could be different in  
14 those two different surveys.

15 Q. And so here you're talking about the placement  
16 and prominence of a citizenship question on the census,  
17 right?

18 A. Um-hmm.

19 Q. And --

20 A. And I mean I would say context generally. So the  
21 absence of having the nativity question before is another  
22 way in which the context is different.

23 Q. Got it. In terms of placement and prominence  
24 though the citizenship question is, as currently planned,  
25 is going to be last on the form, right?

1 MR. FREEDMAN: Object to form.

2 THE DEPONENT: So what I have seen in Secretary  
3 Ross's statement is a directive to put it at the end of the  
4 form. How that actually happens we talked about before, is  
5 entirely unclear given that that is a household member  
6 level question, and so what that means for it to be on the  
7 end of the form is a little bit unclear.

8 BY MR. EHRLICH:

9 Q. Got it. Isn't there -- is there a less prominent  
10 place for a citizenship question to be on the 2020  
11 decennial census questionnaire?

12 MR. FREEDMAN: Object to form.

13 THE DEPONENT: My point about prominence was  
14 about the fact that it was one of, I guess, 11 questions,  
15 as opposed to one of 75. So just the prominence is about  
16 how much that question sticks out relative to can somebody  
17 dress or bathe themselves, for instance. In the short form  
18 it really stands out.

19 BY MR. EHRLICH:

20 Q. So in the second full paragraph -- oh, excuse me.  
21 Yeah, the second full paragraph, the last sentence says in  
22 the ACS and on the 1950 census the placement of a  
23 citizenship question after a place of birth question might  
24 signal the government's interest in patterns of migration,  
25 which might not trigger the same sensitivities as a

1 freestanding question about citizenship status. Right?

2 A. Um-hmm.

3 Q. Do you have -- strike that. What's the basis for  
4 this opinion?

5 A. That's simply my basis as a survey methodologist  
6 as how somebody might interpret. I don't know if that is  
7 backed up by anything. It's simply to say that it is a  
8 plausible interpretation that would to me signal the need  
9 to actually do some testing.

10 Q. Um-hmm. Have there been studies done in terms of  
11 the ACS and people viewing the place of birth and  
12 citizenship question as related to patterns of migration?

13 MR. FREEDMAN: Object to form.

14 THE DEPONENT: I have no, I have no idea if  
15 that's true.

16 BY MR. EHRLICH:

17 Q. You haven't reviewed any --

18 A. No.

19 Q. -- like that?

20 A. No.

21 Q. How often do census respondents understand the  
22 rationale for every question on the census questionnaire?

23 MR. FREEDMAN: Object to form.

24 THE DEPONENT: Not enough. And it's related to  
25 whether or not they are likely to respond. Certainly

1   there's been recognition by the Census Bureau and testing  
2   by the Census Bureau of the need to provide a rational for  
3   individual questions. And so it's one of the things that  
4   we've seen over the last decade in terms of explaining with  
5   the ACS why individual questions are asked. Going back to  
6   the research I did in 2000, and the privacy concerns that  
7   were associated with individual questions, people are like,  
8   why are you asking me if I have, you know, plumbing in the  
9   house, right? And part of the thinking was is that if we  
10   can explain to people why we need to ask this question,  
11   then it makes them more likely to respond. And so my point  
12   here is, yes, it's entirely speculation as to how people  
13   might be interpreting why this question is asked. My point  
14   is to say is that how they interpret the question matters  
15   in terms of if and how they respond, and how they interpret  
16   the question is related to, according to survey methodology  
17   research not only the wording of the question, but also the  
18   placement of the question, and the context in which it's  
19   asked.

20                   BY MR. EHRLICH:

21           Q.   Got it. So your sentence here about how the  
22   placement of a citizenship question after a branched  
23   question on place of birth might signal the government's  
24   interest in patterns of migration is just your speculation  
25   in terms of highlighting the larger importance of context

1 and people understanding the rationale for questions?

2 A. No. It's my -- based on my background as a  
3 survey methodologist, recognizing what it is that we need  
4 to further scrutinize, and this would be one of those  
5 things.

6 Q. Do you know if the citizenship question on the  
7 ACS was preceded by a question on place of birth in order  
8 to evaluate patterns of migration?

9 MR. FREEDMAN: Object to form.

10 THE DEPONENT: I can't speak specifically to the  
11 rationale for that.

12 BY MR. EHRLICH:

13 Q. Okay.

14 A. Good question though.

15 Q. If we could go to 29. I'm sorry, 30. This is  
16 talking about, the top of the page is talking about  
17 consultation with experts and advisors, and it's talking  
18 about two advisory committees. Can you describe that  
19 process?

20 A. So I make a couple different points here. One is  
21 that in the 2010 decennial there was a Census Advisory  
22 Committee that was set up to make recommendations  
23 specifically about the decennial. There was a Federal  
24 Register seeking nominations, but then I never heard  
25 anything else about it, and heard that it was -- advice was

1 going to be heard instead through the two Advisory  
2 Committees, the National Advisory Committee and then the  
3 Census Scientific Advisory Committee.

4 Q. How often does the -- if I say NAC, you'll  
5 understand that's National Advisory Committee?

6 A. Um-hmm.

7 Q. How often does that Committee meet?

8 A. I can't speak to NAC, but CSAC would meet twice a  
9 year.

10 Q. Twice a year.

11 A. Um-hmm. And then working groups would do work in  
12 between meetings.

13 Q. Got it. So when was the last CSAC meeting?

14 A. I don't know if there's been one this -- there  
15 hasn't been one. So, I guess, the last one was in the  
16 spring.

17 Q. In March 2018?

18 A. That sounds right.

19 Q. And so when would the CSAC meeting before that  
20 have been?

21 A. In the fall.

22 Q. The fall of 2017?

23 A. Um-hmm.

24 Q. So there would not have been a CSAC meeting  
25 between when the Department of Justice asked for a

1 citizenship question and Secretary Ross decided to add the  
2 citizenship question, is that right?

3 MR. FREEDMAN: Object to form.

4 THE DEPONENT: So CSAC, I was a member of CSAC  
5 until -- ended at the March meeting. But we submitted a  
6 letter to Secretary Ross when it was announced that he was  
7 considering it not officially as CSAC but members of CSAC.  
8 And then right before the March meeting, we heard about the  
9 decision.

10 BY MR. EHRLICH:

11 Q. So the March meeting was after the decision was  
12 made?

13 A. Um-hmm.

14 Q. But in that intervening time between the request  
15 from DOJ and the decision to add it, there was no CSAC  
16 meeting?

17 MR. FREEDMAN: Object to form.

18 THE DEPONENT: No.

19 BY MR. EHRLICH:

20 Q. Okay. Do you know if that's true for NAC as  
21 well?

22 MR. FREEDMAN: Same objection.

23 THE DEPONENT: I don't know, but I would say that  
24 we oftentimes receive -- when I was on CSAC, we would  
25 receive updates in between meetings. So the timing of a

1 meeting doesn't necessarily correspond to engagement of the  
2 committee.

3 BY MR. EHRLICH:

4 Q. And what does an update entail?

5 A. It varies. Sometimes it is a sharing of  
6 information. Sometimes it would be a presentation where we  
7 all call in. Sometimes it was a working group meeting  
8 virtually. So certainly there was activity going on in  
9 between meetings.

10 Q. Got it. You mentioned that you were on CSAC,  
11 correct?

12 A. Correct.

13 Q. And CSAC, did CSAC talk about the citizenship  
14 question after the decision was made in the March meeting?

15 A. I did.

16 Q. And is it fair to say that CSAC had concerns  
17 about the citizenship question?

18 A. That is fair to say, yes.

19 Q. Okay. And if CSAC had been consulted while the  
20 citizenship question was under active consideration by the  
21 Secretary, what would CSAC's advice have been?

22 MR. FREEDMAN: Object to form.

23 THE DEPONENT: I think we were pretty explicit  
24 about our advice and our recommendations, and I think I  
25 quoted them in my report. But one of the main things we

1 said was the importance of testing. We also raised  
2 concerns about the impact on data quality, specifically on  
3 response rates, and the overall impact on the opinions of  
4 the Census Bureau. That included, you know, just the  
5 political -- this just makes the Census Bureau's job so  
6 much more difficult.

7 BY MR. EHRLICH:

8 Q. Got it. Do you know if the Census Bureau itself  
9 supported the addition of a citizenship question?

10 MR. FREEDMAN: Object to form.

11 THE DEPONENT: So I -- based on the things that  
12 I've read, the explicit recommendation was that it was  
13 going to be harmful to the count.

14 BY MR. EHRLICH:

15 Q. Harmful to data quality?

16 A. Yeah.

17 Q. And CSAC would have been of that same opinion,  
18 right?

19 MR. FREEDMAN: Object to form.

20 THE DEPONENT: I don't want to say that those are  
21 parallel decisions. They're, you know, my understanding of  
22 the official Census Bureau position comes from analyses of  
23 administrative records, and analyses of these series of  
24 different options. Those were not discussed by CSAC. The  
25 CSAC concerns were explicitly focused on not the set of

1 alternatives, but what was the likely impact going to be  
2 based on our expert opinions, and what was the information  
3 that we would like to see the Census Bureau pull together  
4 in responding.

5 BY MR. EHRLICH:

6 Q. Okay. But CSAC did not support the addition of a  
7 citizenship question is that right?

8 MR. FREEDMAN: Object to form.

9 THE DEPONENT: CSAC made an official  
10 recommendation stating opposition to the addition of a  
11 citizenship question.

12 BY MR. EHRLICH:

13 Q. Okay. And the --

14 A. Because of concerns of -- a number of concerns  
15 about the likely impact, the process and so on.

16 Q. Did CSAC feel that those concerns were echoed by  
17 the Census Bureau in its memos to the Secretary?

18 MR. FREEDMAN: Object to form.

19 THE DEPONENT: We never had that explicit  
20 discussion. At the CSAC meeting concerns were raised. The  
21 Census Bureau response was exactly what, you know, it  
22 should have been, which is to say we are going to try and  
23 do the very best job we can do as we're told, you know,  
24 depending on what we're told to do. It was very clear that  
25 particularly given the freshness of the decision that there

1 was a lot of uncertainty. Uncertain, like, inability to be  
2 able to say what the consequences of this would be in  
3 response to questions that CSAC raised.

4 BY MR. EHRLICH:

5 Q. So as of the March meeting neither CSAC nor the  
6 Census Bureau supported the addition of the citizenship  
7 question at that point?

8 MR. FREEDMAN: Object to form.

9 THE DEPONENT: I don't know. I mean, certainly  
10 at that point I didn't know the -- I had not seen Abowd's  
11 memo. I don't know the date of when those two things  
12 corresponded, but I don't think I had seen Abowd's memo.  
13 So I at that point I didn't know the official Census Bureau  
14 position, if that's what we're -- Abowd's position.

15 BY MR. EHRLICH:

16 Q. Yeah. So given your knowledge today --

17 A. Yeah.

18 Q. -- the Census Bureau did not advocate for the  
19 addition of the citizenship question on the 2020 census,  
20 right?

21 A. The Census Bureau recommended against adding a  
22 citizenship question.

23 Q. And CSAC --

24 A. Also recommended against adding the citizenship  
25 question.

1           Q.    Okay.  Can we turn to 34?  At the bottom -- the  
2   bottom paragraph on this page, the middle sentence.  
3   Empirical research finds that respondents are less likely  
4   to answer sensitive questions in an interview-administered  
5   survey compared to a self-administered survey, right?

6           A.    Um-hmm.

7           Q.    This is -- and what's your basis for that  
8   opinion?

9           A.    Just previous research, and again the point of  
10   this paragraph of which this is one piece, is to say that  
11   the addition of a citizenship question in the NRFU  
12   operation where you have an interviewer creates an  
13   additional layer of complication to be studied.  And  
14   certainly we recognize in the survey methodology research  
15   that different modes of survey completion matter in terms  
16   of sensitive questions in particular.

17          Q.    So here we're just talking about answering  
18   sensitive questions.

19          A.    Generally.

20          Q.    Generally.

21          A.    Not citizenship questions specifically.

22          Q.    And do this in the terminology we discussed  
23   earlier, this would be concerns about item non-response?

24          A.    Not necessarily.  I mean, you could also have  
25   break-offs.  And if you have a breaking off early enough

1 then it becomes essentially unit non-response. So, yeah.  
2 I mean, typically with the sensitive -- with a sensitive  
3 question oftentimes people don't encounter it until they  
4 have already agreed to participate in the survey. And, you  
5 know, this is one of the things that's kind of different  
6 about something as big as the census is that people know  
7 about a question before they actually encounter it on the  
8 actual survey.

9 Q. But if an enumerator visited someone's house  
10 during NRFU, and they interviewed with the enumerator but  
11 broke off at the citizenship question, they would have  
12 already supplied the household information before that,  
13 right?

14 A. With that, yeah, particular example, yeah.

15 Q. Yeah. And if an enumerator comes to the door,  
16 and the person skips the citizenship question in the  
17 enumerator interview, all the information about the  
18 household would still have been collected at that point,  
19 right?

20 A. If they just give it, yeah.

21 Q. Okay. So this is along the same lines, but going  
22 on the top of 35. You know what -- scratch that. Further  
23 down on 35, you're talking about the background of  
24 enumerators hired for the non-response follow-up process,  
25 right? And the last sentence of that paragraph, can you

1 read that?

2 A. Moreover, the staffing challenges noted by a  
3 recent GAO report --

4 Q. I'm sorry. The -- I'm sorry. The first full  
5 paragraph on 35, the sentence that begins for example.

6 A. Oh. For example, the Census Bureau has announced  
7 it will hire only U.S. citizens as enumerators for the 2020  
8 census, a decision that could deprive the Bureau of a pool  
9 of potential enumerators likely to have the very language  
10 skills and cultural backgrounds critical to reaching the  
11 very populations -- well, deterred from census  
12 participation because of the sensitive question.

13 Q. And what's your basis for that opinion?

14 A. That non-citizens might be able to better reach  
15 non-citizens. Is that a part of the question or about the  
16 decision that they will only hire U.S. citizens?

17 Q. The former is what I was going for.

18 A. Okay.

19 Q. So --

20 A. So we know that interviewer characteristics  
21 matter in terms of people's willingness to respond, and  
22 willingness to respond to the questionnaire. Let me give  
23 just an extreme example. So suppose an enumerator shows up  
24 in a high density Hispanic household with a Make America  
25 Great Again hat on, that they would likely be less willing

1 to open the door, and less willing to respond, and respond  
2 accurately. Interviewer -- I mean, obviously that's not  
3 going to happen, but interviewer characteristics matter.  
4 And so it's one of the reasons that there has been an  
5 attempt to match neighborhood enumerators in the  
6 neighborhoods that need to be counted. When you have, you  
7 know, areas that have a high density of non-citizens we  
8 have removed from the potential pool of potentially  
9 effective enumerators if we're limiting ourselves to  
10 citizens.

11 Q. And so here you're highlighting language skills  
12 and cultural backgrounds that would be helpful when you're  
13 in a particular community, right?

14 A. Yeah.

15 Q. And so is it possible that U.S. citizens would  
16 have the same language and cultural skills in order to  
17 enumerate those same communities?

18 MR. FREEDMAN: Object to form.

19 THE DEPONENT: I think that's a reasonable  
20 question. The question is, is will there be sufficient  
21 numbers of citizen enumerators who are also viewed as, you  
22 know, like me in those neighborhoods. You've taken out a  
23 potential pool of enumerators by with this restriction.

24 BY MR. EHRLICH:

25 Q. But you have no quantitative evidence that there

1     won't be enough people with language and cultural  
2     backgrounds to enumerate?

3             MR. FREEDMAN: Object to form.

4             THE DEPONENT: I do not.

5             BY MR. EHRLICH:

6             Q. Okay. Could we go to 41? So your concluding  
7     paragraph at the end you say based on a review of the  
8     quantitative and qualitative research and evidence the  
9     preponderance of the evidence suggests that it's highly  
10    likely that the addition of a citizenship question will  
11    exacerbate the disproportionate undercount of non-citizen  
12    households and Hispanics. Is that right?

13            A. Um-hmm.

14            Q. What level of certainty do you have in that  
15    conclusion?

16            A. As I say, I think that every piece of evidence  
17    that I have seen all points in the same direction. All  
18    points to a negative impact. So, you know, have a high  
19    degree of certainty about the direction of that effect.

20            Q. Um-hmm. When you're saying a preponderance of  
21    evidence here, what do you mean by that?

22            A. Just meaning that study after study after  
23    study -- every piece that I looked at. Like I never  
24    encountered any piece of evidence that was counter to their  
25    being a negative impact. There was nothing that suggests,

1 oh, maybe we'll get some people that will be more likely to  
2 respond. Maybe they'll be -- there was nothing that  
3 pointed to any other direction over the fact.

4 Q. Any you say -- when you say highly likely, do  
5 you -- did you attempt to quantify how likely this would  
6 be?

7 A. No.

8 Q. Would it be able -- would you be able to do that?

9 A. The Census Bureau could.

10 Q. How would the Census Bureau do that?

11 A. They might do a coverage analysis after an end-  
12 to-end test in which there was a citizenship question that  
13 had been adequately tested over the course of many years.

14 Q. But absent that, there's no quantitative way to  
15 figure out the answer to this question?

16 MR. FREEDMAN: Object to form.

17 THE DEPONENT: I think the question is if you're  
18 looking for the likely effect and the direction of that  
19 effect versus a point estimate about the size of that  
20 effect, and that's where I feel very confident in  
21 concluding that all of the evidence -- there is  
22 considerable evidence that suggests a negative impact. I  
23 understand the desire to try and get the size of that  
24 negative effect, and that's a far more difficult empirical  
25 challenge, and it's one that absent additional testing and

1 research by the Census Bureau that we just aren't going to  
2 have any confidence.

3 BY MR. EHRLICH:

4 Q. Got it. So your -- in your professional opinion  
5 there's going to be some negative effect of the citizenship  
6 question, but you don't know how much?

7 A. Correct.

8 MR. EHRLICH: Okay. Handed you Exhibit 8.  
9 (DOJ Exhibit 8 marked for identification.)

10 BY MR. EHRLICH:

11 Q. This is the expert rebuttal report of D.  
12 Sunshine Hillygus, Ph.D. Does this look familiar?

13 A. It does. I'm sure I'll identify some more typos.

14 Q. Page 2. At the bottom paragraph, middle of the  
15 paragraph, you say it is well established that proxy  
16 respondents provide less accurate data. Is that right?

17 A. Yes.

18 Q. And what's your support for that?

19 A. There I'm referencing the Mule coverage analysis.  
20 I think that might be the same one that is entered into  
21 evidence. But I also reference there Restacki (ph.) and  
22 O'Hara. And pretty much any time we see any analysis of  
23 proxy respondents by, you know, every measure we see lower  
24 quality data.

25 Q. So this is -- sorry. If we look at Footnote 8,

1 it looks like you're citing Dr. Abowd's January 19th memo,  
2 is that right?

3 A. Oh, yeah, sorry. Looking at the wrong one. But  
4 in the next sentence is an example of how proxy respondents  
5 provide lower quality data, and that was the Mule citation.

6 Q. Got it. And that's what that says, the 2010  
7 census coverage measurement analysis found the correct  
8 enumeration was 27.1 percent lower for proxy responses  
9 compared to self-responses, right?

10 A. Um-hmm.

11 Q. And we looked at how those calculations were done  
12 earlier today in terms of what correct enumerations are,  
13 right?

14 A. Yes.

15 Q. Okay. Can we turn back to Exhibit 3 again,  
16 please? And this is again Dr. Abowd's January 19th memo,  
17 is that right?

18 A. Um-hmm.

19 Q. Turning to page 1282, the first full paragraph.  
20 Can you read the first sentence?

21 A. Sure. One reason that the erroneous enumeration  
22 in the whole person imputation rates are so much greater  
23 during NRFU is that the data are much more likely to be  
24 collected from a proxy rather than a household member. And  
25 when they do come from a household member, that person has

1 less accurate information than self-responders.

2 Q. Right. And then the further down in the  
3 paragraph he writes, the information for 21 percent of  
4 persons whose data were collected during NRFU is based on  
5 proxy responses. For these 16 million persons the correct  
6 enumeration rate is only 70.1 percent. Among proxy  
7 respondents erroneous enumerations are 6.7 percent, and  
8 whole person census imputations are 23.1 percent. Is that  
9 right?

10 A. Um-hmm.

11 Q. So when Dr. Abowd is talking about accuracy here,  
12 he's measuring it in terms of enumerations, erroneous  
13 enumerations, whole person imputations, right?

14 MR. FREEDMAN: Object to form.

15 THE DEPONENT: Correct. That is my  
16 understanding.

17 BY MR. EHRLICH:

18 Q. If we go back to your rebuttal report, which is  
19 Exhibit 8. Actually, I'm sorry. Can we turn to the Mule  
20 report.

21 MR. FREEDMAN: That's Exhibit 1.

22 MR. EHRLICH: Exhibit 1. Thank you.

23 BY MR. EHRLICH:

24 Q. Actually you know what, I apologize. Let's go  
25 back to your report. Rebuttal Report Exhibit 8, please,

1 page 4. So the bottom paragraph of this you're referencing  
2 the Census Bureau analysis that we've looked at today in  
3 terms of the drop in self-response rate for non-citizens,  
4 right?

5 A. Yes.

6 Q. The end of that paragraph into the next page says  
7 in addition the translation of the estimate into a  
8 predicted increase in NRFU workload rests on the assumption  
9 that average household size for non-citizens is the same as  
10 the general population. Can you describe the basis for  
11 that opinion? Or strike that. Can you describe why  
12 household size matters in terms of increased NRFU workload  
13 and cost?

14 A. Sure. Actually, the household size is actually  
15 really critical, I think, throughout because if you assume  
16 that the non-citizen and Hispanic households are less  
17 likely to self-respond, and you're making a projection  
18 about your NRFU households on the basis of general  
19 household size, then you're underestimating the number of  
20 people who are going to ultimately be put into -- and  
21 counted through NRFU. Household size matters again when it  
22 comes to proxy responding, and why I expect that proxy  
23 respondings is more likely to lead to under estimates of  
24 Hispanic and non-citizen households. And so --

25 Q. So is it your understanding of the NRFU process

1 that when an enumerator is attempting to follow-up on a  
2 household that has not self-responded they would attempt to  
3 contact every person in that house?

4 A. No, no, no. It's more just in terms of, yeah.  
5 So I mean it's certainly the households don't -- number of  
6 households don't change, but when you trace out the  
7 implication from self-response to NRFU to ultimately  
8 undercount that's where that ultimately matter.

9 Q. But looking at the sentence in terms of NRFU  
10 workload and costs, is it fair to say that household size  
11 does not matter for purposes of NRFU workload and cost?

12 A. I don't -- I mean, so as I reference on picking  
13 up on the Brown assumption about equivalents. And so if  
14 that's an assumption that's not necessary because it  
15 doesn't matter, then it doesn't matter. But that was what  
16 I was trying to do was trying to identify within the  
17 Brown estimates.

18 Q. So Brown is Exhibit 4, page 42, Bates stamp  
19 ending in 9874.

20 A. So maybe this reference here means that this  
21 assumption here doesn't necessarily apply to the NRFU.  
22 Only it applies to the implications of a NRFU for the next  
23 stage.

24 Q. Got it.

25 A. Yeah.

1 Q. But an increase in household size is not going  
2 to -- that factor alone will not increase NRFU costs and  
3 workload, right?

4 A. I should -- that's probably something I don't  
5 know the answer to exactly. But I think it's a fair point  
6 to say that NRFU workload is in terms of households, not  
7 individuals.

8 Q. Okay. And so --

9 A. I don't know if the assumptions that Abowd made  
10 about like field staff, if that comes in or not, but it is  
11 correct to -- I think it is correct to say that NRFU  
12 workload is a function of households, not individuals  
13 within the household.

14 Q. Got it. Can we go to page 6? In the bottom  
15 paragraph, the second sentence you're talking about testing  
16 again, and you write simply because Census Bureau standard  
17 A2-3 indicates that the pre-testing exception is allowed in  
18 some circumstances does not mean that conclusion is the  
19 appropriate decision here. So the Census Bureau standards  
20 do allow an exception for pre-testing of a question when it  
21 was included on another survey, right?

22 MR. FREEDMAN: Object to form.

23 THE DEPONENT: So what I can speak to is both my  
24 understanding of Census Bureau standards and survey  
25 methodology --

1 MR. EHRLICH: Sure.

2 THE DEPONENT: -- standards. And the standard  
3 practices in terms of pre-testing. Is there potential to  
4 waive an exception for pre-testing? It does appear that  
5 that is the case of the pre-testing of a question. One of  
6 the things that, as I explained in my report, is the  
7 importance of not just testing a question but a  
8 questionnaire, and that the extent to which the inclusion  
9 of a citizenship question on the ACS is fundamentally  
10 different from inclusion on the census short form, that's  
11 in terms of, you know, placement, prominence, the lead-in  
12 to the context. That all of those things are different,  
13 and different in a way that I would say makes it not  
14 previously extensively tested, similar to including on  
15 census long form. I mean census short form.

16 BY MR. EHRLICH:

17 Q. So in your opinion the question has been  
18 adequately tested, but has not been adequately tested in  
19 the context of the short form questionnaire for the 2020  
20 census?

21 MR. FREEDMAN: Object to form.

22 THE DEPONENT: Yes. And I should say the ACS  
23 question has been tested. A question on the short form is  
24 different from the ACS question in several respects, and so  
25 has not been adequately tested.

1 BY MR. EHRLICH:

2 Q. But context of the question on the short form,  
3 correct?

4 A. Right. And in particular the connection to the  
5 where you were born.

6 Q. But the citizenship question on the 2020 census  
7 will be identical to the ACS, right?

8 MR. FREEDMAN: Object to form.

9 THE DEPONENT: I have made the case that it is  
10 not identical. It's not identical because you don't have  
11 first ask where you were born, and then the other parts of  
12 the questionnaire that are different.

13 BY MR. EHRLICH:

14 Q. So in terms of the questionnaire and how you get  
15 to the question, that's different, right?

16 A. Yeah.

17 Q. But the question itself asking about citizenship?

18 A. The response options and stuff, yes.

19 Q. That's all the same for the 2020 census?

20 A. Um-hmm, yeah.

21 Q. For both -- we've looked at your initial expert  
22 report, which is Exhibit --

23 MR. FREEDMAN: Five.

24 MR. EHRLICH: Five. Thank you.

25 BY MR. EHRLICH:

1 Q. And your rebuttal expert report, which is  
2 Exhibit 8, correct?

3 A. Um-hmm.

4 Q. Are there any other grounds supporting your  
5 opinions that you have not disclosed on the record?

6 A. No.

7 Q. Okay. Backing out of the reports. When did you  
8 first learn that a citizenship question was being  
9 considered for the 2020 census?

10 A. It was when I was a member of CSAC and a little  
11 bit of -- I'm not entirely sure of the timing, but I  
12 believe I was probably contacted by Barbara Anderson about  
13 it being considered.

14 Q. Who is Barbara Anderson?

15 A. She was Chair of CSAC. And there was a question  
16 if members of CSAC not representing CSAC, but as members of  
17 CSAC if we wanted to write an opinion, we sent a letter to  
18 Secretary Ross.

19 Q. And about when was that?

20 A. Whenever. I don't know.

21 Q. Okay.

22 A. Like whenever he said he was considering it we  
23 sent in a letter, and I really thought there was just no  
24 chance that it would actually happen. And then got a  
25 letter from him, and then heard the announcement shortly

1       thereafter right before the March CSAC.

2           Q.     And from him you mean Secretary Ross?

3           A.     Yes.

4           Q.     So I think you sort of suggested the answer to  
5     this next question, but what was your initial reaction upon  
6     learning that the citizenship question was being considered  
7     for the 2020 census?

8           A.     Upon that initial -- that wasn't that big of a  
9     surprise. To consider the addition of a citizenship  
10    question is not out of the realm of possibility. To  
11    consider doing some extensive testing to see if it would be  
12    feasible to add, I also wasn't terribly surprised by. What  
13    I was surprised by was by the decision to actually add it  
14    in this round as opposed to putting it in a queue for  
15    testing and evaluation.

16          Q.     Did you have an opinion around the time you sent  
17    the letter to Secretary Ross whether adding the citizenship  
18    question would be a good idea or a bad idea?

19          A.     We recommended at a pretty high level against  
20    doing it. But --

21          Q.     And why was that?

22          A.     On expectation that it could have a negative  
23    impact based on just our, you know, collective expert  
24    opinion about the questionnaire.

25          Q.     But you had not done any testing at that point to

1 determine the impact, right?

2 A. Well, I mean, no testing. I didn't do any  
3 original data analysis from my report. And I would say  
4 that in terms of a good chunk of the survey methodology  
5 literature that I brought to bear here was stuff that I  
6 carry around in my head, right? So, you know, I can't  
7 remove my opinion on the basis of my background in survey  
8 methodology then from -- I mean, certainly my opinion here  
9 has been better researched and have been able to bring to  
10 bear more empirical evidence. But I wouldn't say it was an  
11 uninformed opinion then.

12 Q. At the time you formed that opinion, you had not  
13 seen, for example, Dr. Abowd's analysis of drop-off in  
14 self-response rates, right?

15 A. No. My opinion at that point was based on my  
16 knowledge of the survey methodology literature, my  
17 experiences as a member of CSAC, as a researcher, NCRN,  
18 having at that point written, you know, had already written  
19 a book on census participation. So, you know, I hadn't  
20 seen any new specific analyses regarding the addition of a  
21 citizenship question that we'd seen, but a lot of the same  
22 things that I brought to bear and document I discuss in my  
23 report.

24 Q. And when you're talking about the knowledge that  
25 you brought to bear, you're talking about the studies

1 concerning, for example, non-citizen concerns with  
2 confidentiality and things of that nature?

3 A. No. More I was thinking about just my knowledge  
4 of the survey response decision, and the likely impact of  
5 sensitive questions generally. That that is where a lot of  
6 the scientific literature has focused. Yes, I'm a public  
7 opinion scholar. So I'm certainly, you know, vaguely aware  
8 of what public opinion is right now in various domains.  
9 But I, at that point, I wasn't aware specifically of say,  
10 you know, what specific numbers were regarding Hispanics  
11 fear of deportation for instance.

12 Q. So just to clarify. So your initial reaction  
13 when around the time when CSAC sent the letter to the  
14 Secretary that adding the citizenship question to the 2020  
15 census would be a bad idea, it was based on just your  
16 general knowledge in the field, is that right?

17 A. In multiple fields, yeah. So with respect to  
18 census cooperation specifically with survey methodology as  
19 well. And familiarity with, you know, the census -- the  
20 challenge -- I mean, the 20 -- there was certainly  
21 recognition that the 2020 census was already fragile, had a  
22 lot of challenges on its, you know, without adding one more  
23 piece to make it more complicated. And so that background  
24 knowledge was what led into that collective letter.

25 Q. Okay.

1           A.    And I don't actually remember the content of that  
2   letter.  I think it was pretty short and sweet to say we  
3   just want to get down on the record that this seems like a  
4   bad decision.  And, again, we were really surprised.  I  
5   should speak for myself.  I was really surprised.

6           Q.    At the time you sent that letter, did you know  
7   that there was not going to be testing done?

8           A.    No.  But I also was familiar with the lengthy  
9   process of testing that we go through with the ACS for  
10  instance.  And it was hard to imagine how you squeeze that  
11  much thoroughness into a short timeframe.

12          Q.    So beyond -- strike that.  And at this point you  
13  didn't know if a citizenship question was added to the  
14  census what form that question would take, correct?

15          A.    I did not know, no.

16          Q.    Okay.

17          A.    I probably would have assumed that it would have  
18  been a, are you a citizen?  Yes, no.  As opposed to one  
19  that had distinctions between Guam and, you know, foreign  
20  born or U.S. citizens abroad, parents, and so on.

21          Q.    Would a yes, no citizenship question have been  
22  better?

23                MR. FREEDMAN:  Object to form.

24                THE DEPONENT:  I think that's a good question  
25  that we could have answered with the RCT that was designed.

1           MR. EHRLICH: I'm handing you what's been marked  
2 as Exhibit 9.

3 (DOJ Exhibit 9 marked for identification.)

4           BY MR. EHRLICH:

5           Q. And it's a presentation called Discussion  
6 Comments, 2020 Update by D. Sunshine Hillygus, Duke  
7 University, publicly available. Do you recognize this  
8 document?

9           A. I do.

10          Q. Did you write this presentation?

11          A. I did.

12          Q. And can you explain what this presentation is  
13 for?

14          A. Sure. The CSAC Chair asked CSAC members to  
15 discuss various presentations over the course of the CSAC  
16 meeting, and she had asked me to do the discuss and  
17 comments. I can't remember the exact timing of her request  
18 and the announcement of, but again as you can see in here,  
19 I focused quite a bit of attention on the announcement of  
20 the citizenship question.

21          Q. And so what was the purpose for giving the  
22 presentation?

23          A. To provide feedback to the Census Bureau, to ask  
24 questions of the Census Bureau, to be able to get -- I  
25 mean, our role is to be able to offer advice, also serve as

1 kind of liaison census and the user community.

2 Q. So you talked about how you first formed your  
3 opinion around the time that CSAC sent the letter to the  
4 Secretary, right?

5 A. Yeah.

6 Q. And so this presentation to CSAC could have been  
7 two months later or so?

8 A. Yeah, yeah.

9 Q. Had you done any additional research between the  
10 first point in time and the second point in time?

11 A. I mean, only probably the 45 minutes or two hours  
12 or whatever put into to articulating my responses.

13 Q. Got it. So turning to the second page.

14 A. Um-hmm.

15 Q. Which I think is the first slide. The slide just  
16 says WTH, right?

17 A. Right.

18 Q. What does that stand for?

19 A. I was censoring myself.

20 Q. Please uncensor yourself for the purposes here.

21 A. Well, I would have said WTF, but I thought there  
22 could be people watching. So what the hell. So, like I  
23 said, I was really surprised, and that about the decision  
24 to add a citizenship question. I don't know the internal  
25 dynamics of how much the Census Bureau is kind of forced to

1 do what the Commerce Secretary says even if it violates  
2 their standards and guidelines and procedures. And so I  
3 had just assumed that because an addition of the  
4 citizenship question just so clearly seemed like a danger  
5 to the quality of the census that 2020 would be protected.  
6 And I had also hoped that Secretary Ross was committed to  
7 an accurate and fair census. And so, again, I was just  
8 really surprised by the decision.

9 MR. FREEDMAN: Counsel, we've been going about an  
10 hour and 15 minutes again, and there's a court order that I  
11 want a chance to look at. So if we could go off, I  
12 appreciate.

13 MR. EHRLICH: Yeah, sure.

14 (Off the record at 4:05 p.m.)

15 (On the record at 4:19 p.m.)

16 BY MR. EHRLICH:

17 Q. So we were talking about your presentation at  
18 CSAC at the end of March 2018. And you were describing  
19 your opinion at the time of the Secretary's decision. Do  
20 you recall saying during the presentation that it was an  
21 absolutely awful decision?

22 A. That sounds right.

23 Q. Okay. Is that for substantially the reasons that  
24 you've already talked about?

25 A. Well, and, I mean, I think at the time I laid out

1 exactly the specific things that were coming to mind at  
2 that point. I think there have probably been a few things  
3 that have changed since I have done more research.

4 Q. What has changed since the time of this  
5 presentation in terms of the research you've done?

6 A. I've been able to look at the research that was  
7 more explicitly about citizenship question specifically.  
8 Like I said, the things that I was able to bring to bear on  
9 more were informed based on my background knowledge about  
10 surveys generally in the census, and in previous cycles.  
11 And so, you know, at this point having seen the Brown  
12 analysis and break-offs and so on it just gives, again, I  
13 guess a way to put it is to say every piece of evidence is  
14 still pointing to a negative effect. Some of the research  
15 that has been done since I had already expected a negative  
16 effect confirms the likelihood of a negative effect, and  
17 that was all things that were new.

18 Q. Do you recall saying during the presentation that  
19 the controversy caused by the addition of a citizenship  
20 question could possibly increase response rates?

21 A. So I may have talked about the phenomenon that  
22 sometimes what you see is essentially what's called a  
23 backlash effect. And so you can see a backlash effect in  
24 some phenomena, you know, like there's been speculation  
25 that you put in place an electoral rule that makes it

1 harder for a particular group to participate and they're  
2 feeling more mobilized as a result. And so I suspected  
3 like in context of talking about this that I may have been  
4 emphasizing the importance of all this what's going to  
5 happen.

6 Q. Do you recall in the presentation saying anything  
7 along the lines of you would like to resign and rail  
8 against the decision?

9 A. I don't remember that explicitly. It was my last  
10 CSAC meeting. So there was no need to resign. But  
11 certainly rail against the decision. Yes, I think that I  
12 did that.

13 Q. Fair enough. When were you first contacted by  
14 counsel about testifying in this case?

15 A. I don't -- I can't remember exactly when it was.  
16 It was definitely after, after this. I just got a little  
17 bit of attention. I didn't, I really didn't realize -- I  
18 always say that with my 2000 census book, that, you know,  
19 like three people read it, my mom included. Nobody ever  
20 seems to care about census stuff. So I was surprised by  
21 how much attention this got. I -- it was sometime in late  
22 spring, I think.

23 Q. So about April?

24 A. Could be, yeah.

25 Q. Okay. And how soon after that were you retained?

1           A.    I think in May.

2           Q.    Okay.  And what analysis were you asked to do?

3           A.    So, you know, initially we had a lot of  
4   conversations about, you know, overall assessing the impact  
5   of a citizenship question.  And then my foot in this is in  
6   many different spots, both as a survey methodologist, as  
7   somebody who has been on CSAC's.  I've been -- talked about  
8   processes.  And so from the very beginning there was a  
9   little bit of like, you know, we want to ask you questions,  
10  and get your feedback, and ultimately they decided to  
11  retain me even though I think at the time we weren't  
12  exactly clear how I would be used.

13          Q.    Got it.  So about when was it decided that you  
14  would actually provide expert testimony?

15          A.    I guess probably in May or so.  I didn't really  
16  get started just because of other commitments.  I'm working  
17  on a book.  And so I had a book manuscript.  And so the  
18  plan was is, you know, in July once I had the draft of that  
19  manuscript done, I could commit to focusing on my expert  
20  report.

21          Q.    And what did you do to prepare the -- both  
22  reports?

23          A.    Reviewed a lot of documents, and looked at  
24  essentially everything that I could get my hands on about  
25  census participation, about citizenship questions,

1 sensitive questions. And so I was reviewing both my  
2 personal collection of survey methodology books, the  
3 literature, academic journals out there. I mean, one of  
4 the things that has been so, so helpful is the fact that  
5 the Census Bureau is so much more transparent now. And so,  
6 you know, when counsel asked about what I referenced, I  
7 said, just can I put the Census Bureau website? Because so  
8 much of the material is on the Census Bureau website.

9 Q. In preparing your reports, did you do all the  
10 work yourself?

11 A. I did.

12 Q. And so about how much time have you spent reading  
13 materials in order to prepare your reports?

14 A. Just on reading materials, I'm not entirely sure  
15 of the numbers. But, I mean, I've worked over 100 hours on  
16 reviewing material and writing and revising and so on.

17 Q. How much time have you spent discussing this case  
18 with others?

19 A. It's a little hard to say because, I mean, from  
20 the get-to I've been talking about it. And I have now  
21 tried to, you know, not talk to journalists and stuff as  
22 much. But, yeah, certainly I've talked to others.

23 Q. In preparing your report, did you talk to any  
24 other experts that were retained by Plaintiffs?

25 A. So I have talked -- like some of the other

1 experts are ones that I've encountered at conferences and  
2 interact with. I saw Chris Warsha (ph.) at American  
3 Political Science Association Conference. And we both  
4 said, I have no time these days. I mean, that was the  
5 extent of that conversation. So, you know, I have had some  
6 interactions.

7 Q. You sure it wasn't a Stanford alumni event?

8 A. No.

9 Q. Have you talked to other experts retained in this  
10 case about your report?

11 A. Not about my report, no.

12 Q. Have you reviewed other experts' reports in this  
13 case?

14 A. I reviewed one of the reports.

15 Q. Which one?

16 A. Salvo (ph.).

17 Q. Okay. Did you talk with Mr. Salvo?

18 A. No.

19 Q. Okay.

20 MR. FREEDMAN: And, obviously, you reviewed  
21 Dr. Abowd's report as well.

22 THE DEPONENT: Oh, of course, yeah.

23 MR. FREEDMAN: That goes without saying.

24 BY MR. EHRLICH:

25 Q. Does the report, both the initial report and the

1 rebuttal report represent your independent views?

2 A. Yes.

3 Q. How much time did you spend preparing for this  
4 deposition?

5 A. A few hours. So met with them yesterday. Met  
6 once before for a couple hours, and spent some time reading  
7 and rereading materials last night.

8 MR. EHRLICH: Got it. Handing you Exhibit 10.  
9 (DOJ Exhibit 10 marked for identification.)

10 BY MR. EHRLICH:

11 Q. Do you recognize this document?

12 A. I do.

13 Q. And what is it?

14 A. My CV.

15 Q. Can you describe your education?

16 A. Sure. I have a BA in political science and  
17 Spanish from the University of Arkansas, a Master's in  
18 political science from the University of Arkansas, a  
19 Master's in political science from Stanford, and a PhD from  
20 Stanford.

21 Q. And during the time pursuing these degrees, did  
22 you receive any training in statistics?

23 A. Yes.

24 Q. And what type of training was that?

25 A. Statistical training both within political

1 science and the Statistics Department.

2 Q. For which degree?

3 A. For my MA and PhD at Stanford. Some at Master's  
4 at Arkansas, but pretty minor.

5 Q. Um-hmm.

6 A. I also teach, taught statistics at Duke.

7 Q. Did you have any training in demography?

8 A. No.

9 Q. Any training in psychology?

10 A. Political psychology, yes.

11 Q. Can you describe what political psychology is?

12 A. Applied to political decision making. So, you  
13 know, how it is people make up their mind about political  
14 decisions. And I would say civic decisions as well. I  
15 mean, so my current book, and then the book about census  
16 participation draws on that psychology of decision making.

17 Q. And did you receive any training in survey  
18 methodology?

19 A. Um-hmm.

20 Q. Have you -- what classes have you taught in  
21 statistics?

22 A. So I teach, I currently teach a survey  
23 methodology introduction to statistics, a research design  
24 class, a survey practicum. I think those are the main ones  
25 I teach.

1 Q. And just to back up. So after you received your  
2 PhD, you taught at Harvard, is that right?

3 A. Correct.

4 Q. And that was in the Political Science Department?

5 A. Well, it's the Department of Government, but yes.

6 Q. Okay. And in 2010 you transitioned to Duke?

7 A. 2009.

8 Q. 2009. And at Duke you joined the Political  
9 Science Department, right?

10 A. Correct.

11 Q. And you're still in the Political Science  
12 Department?

13 A. Yes. I have a courtesy appointment in public  
14 policy.

15 Q. What is a courtesy appointment?

16 A. Basically they make me do work, and list me on  
17 their website, but don't pay me.

18 Q. Fair enough. What responsibilities do you have  
19 as a professor at Duke currently?

20 A. So in addition to teaching, I'm teaching a class  
21 on public opinion. This semester I'll teach my graduate  
22 level survey methodology class. In the spring I advise  
23 students. I sit on dissertation committees in political  
24 science and statistics and other fields. I direct the  
25 initiative on survey methodology, which is part of the

1 Social Science Research Institute. And the DISM as we're  
2 called, we provide research and training support for  
3 researchers at all levels at the university in survey  
4 methods.

5 Q. Have you ever worked in the Census Bureau?

6 A. Not paid, just a member of CSAC. So I think it's  
7 a special some type of appointment.

8 Q. And CSAC is an advisory committee to the Census  
9 Bureau?

10 A. Correct.

11 Q. How long were you on CSAC?

12 A. The full length. I think that's six years.

13 Q. And why did that end this year?

14 A. Just timing. Bob Robes (ph.) is the one who  
15 invited me to join initially, and I just rotated out. So  
16 didn't have to, you know, resign and rail.

17 Q. Fair enough. And as part of CSAC, what were your  
18 responsibilities?

19 A. It depended on the particular meeting, whether I  
20 would provide feedback on particular areas of the census.  
21 I was also part of working group that I actually worked  
22 with Tom Beuley (ph.), I was mispronouncing his name the  
23 whole time, on the use of administrative records and  
24 adaptive design. And anyway over six years -- and learned  
25 so much about the census. I'm also -- or was a senior

1 investigator on one of the research nodes. Duke has had  
2 one of those, and so was my other involvement in census.

3 Q. Got it. So I'm not going to go through each one  
4 individually, but as I count it, you have about two books,  
5 34 journal articles and 21 other publications? Does that  
6 sound about right?

7 A. Sounds right.

8 Q. Okay. How many of those related to the conduct  
9 of the decennial census?

10 A. Only the book.

11 Q. And that's --

12 A. Well, except, I mean, the survey methodology  
13 stuff is certainly related. A lot of the work that I have  
14 done has been on non 19:26:07 missing data, and  
15 fundamentally a lot of the stuff that we are talking about  
16 is about the fact that it's not random who is going to  
17 respond and who is not. And so although it's not directly  
18 within application of the census, it's the fundamental  
19 issues ultimately.

20 Q. You would agree that the census is sort of its  
21 own beast though, right?

22 MR. FREEDMAN: Object to form.

23 THE DEPONENT: Yes. I would agree that the  
24 census is its own beast.

25 BY MR. EHRLICH:

1 Q. And so, for example, in your other political  
2 surveys, for example, there's no non-response follow-up, is  
3 that right?

4 MR. FREEDMAN: Object to form.

5 THE DEPONENT: True. Well, actually not exactly  
6 true. The American National Election Study, for instance,  
7 had a non-response follow-up. But, yes. I mean, certainly  
8 there are some surveys on which there are differences.  
9 Some of my methodological work though was -- particularly  
10 that with Jerry Ryer (ph.), who also does work with the  
11 Census Bureau, was very much motivated from the standpoint  
12 of thinking about census applications, even if we  
13 sometimes, you know, is purely methodological as opposed to  
14 using census data.

15 BY MR. EHRLICH:

16 Q. Got it. In the other areas that you studied,  
17 primarily political science, right?

18 A. Um-hmm.

19 Q. Strike that. Have you ever conducted your own  
20 survey?

21 A. Many, many times.

22 Q. And in what areas?

23 A. Many, many different areas.

24 Q. Okay. Just broad strokes?

25 A. Yeah. So in terms of because as a survey

1 methodologist both in terms of where I've worked,  
2 collaborated on projects, but also where I've been  
3 interested in the substantive question myself, I mean, I --  
4 have a publication about how you measure sleep  
5 satisfaction. So like that has nothing to do with  
6 politics. Although I guess there are some potential links.  
7 But my involvement in projects is sometimes based purely as  
8 a survey methodologist, not because I'm a substantive  
9 expert in the project. My substantive expertise is looking  
10 at civic and political decision making. And so that's  
11 where the decision to participate in the census, the  
12 decision to vote or not, the decision to get involved in  
13 your community, those are the type of outcomes that I  
14 primarily -- and how people decide in a campaign. The  
15 other aspect of my research is focused on communication  
16 effects. So can the campaign, whether that's an  
17 information campaign from the census or campaign efforts  
18 from a particular candidate, can that have an influence on  
19 people's decision making?

20 Q. And of your extensive publication list have any  
21 of your publications been refuted?

22 A. Yeah. I had -- well, not refuted. I did an  
23 errata on one of them.

24 Q. Which one was that?

25 A. American Journal Political of Science article on

1 the impact of pre-registration on youth turnout. We just  
2 had a mistake in our model. Doesn't change the conclusions  
3 but --

4 Q. Have --

5 A. -- for transparency.

6 Q. Any of your publications have your views changed  
7 since you've public published those papers?

8 A. Oh, for sure, yeah.

9 Q. Can you give an example?

10 A. Not so much my views changed, but just the  
11 standards of what is considered convincing empirical  
12 political behavior research has changed since 2005. And  
13 so, yeah, I mean, so some of the conclusions that I  
14 reached, you know, it's kind of difference between  
15 correlation and causation. We know a lot more now about  
16 how to identify causal effects than we did 15 years ago.

17 Q. Would you consider your reports in this case of  
18 the same quality as the papers that you've published?

19 A. That's a difficult question actually because the  
20 report wasn't peer reviewed, and these are peer reviewed.  
21 And I think highly of the peer review process in terms of  
22 having people catch errors. And so in terms of do I stand  
23 behind the things that I wrote, yes, absolutely. But it's  
24 -- and most of my research is entirely different. Most of  
25 my research is where I'm doing the data collection and

1 doing the data analysis myself.

2 Q. And you didn't do that here?

3 A. There is no original data analysis in my expert  
4 report or rebuttal.

5 Q. Got it. Have you ever served as an expert  
6 before?

7 A. Just once.

8 Q. Can you describe the circumstances?

9 A. Yeah. So it was for the Voting Rights Act case  
10 in North Carolina, and I came on very late, and basically  
11 my expert report was co-authored with my co-author. It was  
12 looking at the impact of pre-registration on youth turnout.

13 Q. Was your expert testimony in that case limited or  
14 excluded at all?

15 A. No.

16 MR. EHRLICH: Can we go off the record?

17 (Off the record at 4:43 p.m.)

18 (On the record at 4:46 p.m.)

19 MR. EHRLICH: Dr. Hillygus, thank you for coming  
20 in today. That's all the questions we have for you at this  
21 time.

22 MR. FREEDMAN: We'll read and sign.

23 (Whereupon, signature not having been waived, the  
24 deposition was concluded at 4:46 p.m., on October 9, 2018.)

25

C E R T I F I C A T E

I, TIMOTHY J. ATKINSON, JR., a Court Reporter and a Notary Public, do hereby certify that the foregoing deponent, DIONE SUNSHINE HILLYGUS, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my notes and electronic recording and is a true record of the testimony given by the foregoing witness.

I FURTHER CERTIFY that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 9th day of October, 2018.



---

Timothy J. Atkinson, Jr.  
Notary Public

My commission expires: May 14, 2021

INSTRUCTIONS TO THE DEPONENT

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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ACKNOWLEDGMENT OF DEPONENT

I, DIONE SUNSHINE HILLYGUS, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendants.

No. 1:18-cv-2921 (JMF)

NEW YORK IMMIGRATION  
COALITION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendants.

No. 1:18-cv-5025 (JMF)

**DEFENDANTS' INITIAL DISCLOSURES**

In accordance with the Court's order on the record on July 3, 2018, and entered on the docket on July 5, 2018, Defendants United States Department of Commerce, Bureau of the Census, Wilbur L. Ross, Jr., in his official capacity as Secretary of Commerce, and Ron S. Jarmin, in his official capacity as performing the non-exclusive functions and duties of the Director of the U.S. Census, disclose under Federal Rule of Civil Procedure 26(a)(1):

## **I. Witnesses**

Defendants maintain their position that this challenge to a final agency action is properly reviewed, if at all, on the basis of the administrative record produced by the agency. Accordingly, at this time there are no fact witnesses Defendants intend to use to support their claims or defenses, other than for impeachment. If this case proceeds to trial, Defendants reserve the right to call any individuals identified in Plaintiffs' initial disclosures or discovery responses or any individuals deposed by any party. Also, should the Court or the plaintiffs question the authenticity of the administrative record, Defendants reserve the right to call a witness to authenticate the administrative record.

## **II. Documents**

Defendants may use the following documents in their possession, custody, or control to support their claims or defenses, but not solely for impeachment:

- Complete administrative record upon which the Secretary of Commerce based his decision to reinstate a question concerning citizenship on the 2020 Decennial Census, filed on June 8, 2018, *see* ECF No. 173, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF)
- Supplement to administrative record, filed on June 21, 2018, *see* ECF No. 189, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (JMF)

## **III. Damages**

Not applicable. Defendants are not claiming damages in these cases.

## **IV. Insurance**

There is no insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in these actions or to indemnify or reimburse for payments made to satisfy the judgment.

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